

1 WATERHOUSE - 10-19-21

2 collectively as the retail funds; is that okay?

3 A. Okay.

4 Q. Each of the retail funds is governed  
5 by a board; correct?

6 A. Yes.

7 Q. And do you know the people who serve  
8 on the boards of the retail funds?

9 MS. DANDENEAU: Objection to form.

10 A. I don't know all of them.

11 Q. Do you know whether the same people  
12 serve on the board of each of the retail funds  
13 as we've defined that term?

14 A. Which -- so when you say "retail  
15 funds" -- again, I want to be -- what retail  
16 funds are you referring to, because there are  
17 -- there are several distinctions?

18 What retail funds are you using when  
19 you refer to them?

20 Q. That is why -- that is why I tried  
21 to define the terms. So let me do it again.

22 Retail funds for the purposes of  
23 this deposition means any retail fund to which  
24 either of the advisors provides advisory  
25 services. Okay?

1 WATERHOUSE - 10-19-21

2 A. Okay.

3 Q. Okay. So do you know whether the  
4 same people serve on the board of each of the  
5 retail funds?

6 A. I don't know.

7 Q. Were you ever employed by any of the  
8 retail funds?

9 A. No.

10 Q. No?

11 A. No.

12 Q. Okay. Do you have any title with  
13 respect to any of the retail funds?

14 A. Yes.

15 Q. What titles do you hold --  
16 withdrawn.

17 Do you have the same titles with  
18 respect to all of the retail funds or do  
19 they -- or just something else?

20 MS. DANDENEAU: Objection to form.

21 Q. Withdrawn.

22 Do you have the same title with  
23 respect to each of the retail funds?

24 A. No.

25 Q. Tell me which title you have with

1 WATERHOUSE - 10-19-21

2      respect to each retail fund.

3                   Actually, let's do it a different  
4   way.  I withdraw the question.

5 Can you give me one title you have  
6 in relation to any retail fund?

7 A. Yes.

8 Q. What title -- what title can you  
9 give me?

10           A.     Principal executive officer.

11 Q. Do you serve as principal executive  
12 officer for each of the retail funds?

13                      A.                      No.

14 Q. Can you identify for me the retail  
15 funds in which you serve as the principal  
16 executive officer?

17           A.       Yes.   Highland Funds 1, Highland  
18   Funds 2, Highland Income Fund, Highland Global  
19   Allocation Fund.

20 Q. I'm sorry, you said "Global  
21 Allocation Fund"?

22           A.     Yes.

23 VIDEOGRAPHER: Excuse me,

24 Mr. Morris. This is the videographer. I'm  
25 concerned about the lighting in the

1 WATERHOUSE - 10-19-21

2 witness' camera.

3 Do you want to go off the record and  
4 make some adjustments?

5 MR. MORRIS: Sure, but just for this  
6 purpose. I don't want to take a break. We  
7 just started.

8 MS. DANDENEAU: Yeah, that is fine.  
9 That is fine. We're going to put you on  
10 mute.

11 MR. MORRIS: All right.

12 MS. DANDENEAU: I'm going to try to  
13 open up some of the shades.

14 VIDEOGRAPHER: We're going off the  
15 record at 10:08 a.m.

16 (Recess taken 10:08 a.m. to 10:11 a.m.)

17 VIDEOGRAPHER: We are back on the  
18 record at 10:11 a.m.

19 Q. Mr. Waterhouse, when did you become  
20 the principal executive officer of the four  
21 retail funds that you just identified?

22 A. I don't recall.

23 Q. Do you recall the approximate year  
24 that you became the principal executive officer  
25 of the four funds?

1 WATERHOUSE - 10-19-21

2 A. 2021.

3 Q. Did you ever hold any title with  
4 respect to any of the four funds you have just  
5 identified other than principal executive  
6 officer?

7 A. I don't recall.

8 Q. Is it possible that you held a  
9 position or a title with the four funds you  
10 just identified prior to 2021?

11 A. Yes.

12 Q. But you don't recall if you did or  
13 not; do I have that right?

14 A. No. You -- I thought you asked, did  
15 I hold other titles.

16 Q. Did you hold any title at the four  
17 retail funds for which you now serve as  
18 principal executive officer at any time prior  
19 to 2021?

20 A. Yes.

21 Q. What titles did you hold?

22 A. I don't recall all the titles.

23 Q. Do you recall any of the titles?

24 A. Yes.

25 Q. What titles do you recall holding at

1 WATERHOUSE - 10-19-21

2 those four retail funds before 2021?

3 A. Principal executive officer.

4 Q. Were you the principal executive  
5 officer of the four retail funds that you have  
6 identified?

7 A. Sorry, could you repeat the  
8 question?

9 Q. Were you the principal executive  
10 officer for each of the four retail funds that  
11 you have identified?

12 A. Yes.

13 Q. When did you become the principal  
14 executive -- withdrawn.

15 Can you give me the approximate year  
16 that you became the principal executive officer  
17 for each of the four retail funds you've  
18 identified?

19 A. I don't recall.

20 Q. What are your duties and  
21 responsibilities as the principal executive  
22 officer of these four retail funds?

23 A. It is to manage the finance and  
24 accounting positions.

25 Q. So at the same time you serve as the

WATERHOUSE - 10-19-21

treasurer of the advisors, you also serve as the principal executive officer of these four retail funds; correct?

A. Yes.

Q. Did you ever hold any title with respect to any other retail fund?

A. Not that I recall.

Q. During the period that you served as Highland's CFO, from time to time Highland loaned money to certain of its officers and employees; correct?

A. Yes.

Q. During the period that you served as Highland's CFO, from time to time Highland loaned money to certain --

A. Let me -- let me retract that, sorry, that -- you asked during the time I was CFO, Highland loaned moneys to employees. I don't -- I don't recall that during my tenure of CFO.

Q. You have no recollection during the time that you were the CFO of Highland of Highland ever loaning any money to any officer or director of Highland?

1 WATERHOUSE - 10-19-21

2 A. I don't recall during my tenure of  
3 Highland or my -- as CFO of Highland -- yeah,  
4 if there are any loans as CFO of Highland.

5 Q. I'm just talking about officers and  
6 employees right now. You have no recollection  
7 of Highland ever making a loan to any of its  
8 officers or employees during the time that you  
9 served as CFO. Do I have that right?

10 MS. DANDENEAU: Objection to form.

11 A. So I thought you were saying  
12 officers and employees as CFO, right, so there  
13 were -- I mean, okay, yes.

14 Q. I would ask you to listen carefully  
15 to my question. If I -- if I'm not clear, let  
16 me know, but I'm really trying to be as clear  
17 as I can.

18 A. I'm listening as carefully as I can,  
19 and you are asking very specific questions in a  
20 timeline. And I'm trying to answer your  
21 questions as specifically as I can, and I  
22 apologize if -- if I'm going back. I am -- you  
23 are asking very specific questions. Thank you.

24 Q. During the period that you served as  
25 Highland's CFO, from time to time Highland



WATERHOUSE - 10-19-21

loaned money to certain corporate affiliates;  
correct?

MS. DANDENEAU: Objection to form.

A. What are corporate affiliates?

Q. How about the ones that are in Highland's audited financial statements under the section entitled Loans to Affiliates. Why don't we start with those. Do you have any understanding of what the phrase "affiliates" means?

MS. DANDENEAU: Objection to form.

A. I understand what affiliates are, yet affiliates can have different meanings in different contexts, so...

Q. Why don't you -- why don't you tell me what your understanding of the term "affiliate" is in relation to Highland Capital Management, L.P.

A. Is that a -- it depends on the context.

Q. How about the context of making loans?

MS. DANDENEAU: Objection to form.

A. I didn't make the determination of

WATERHOUSE - 10-19-21

who an affiliate was or is at the time those --

I didn't -- that wasn't my job to make a

determination of who an affiliate is.

Q. All right. So as the CFO of Highland, do you have any ability right now to tell me which companies that were directly or indirectly owned and/or controlled by Mr. Dondero in whole or in part received loans from Highland Capital Management, L.P.?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Objection, form.

A. Yes.

Q. Okay. Identify every entity that you can think of that was directly or indirectly owned and/or controlled by Mr. Dondero in whole or in part that received a loan from Highland Capital Management, L.P.

MR. RUKAVINA: Objection, legal conclusion.

A. NexPoint Advisors, Highland Capital Management Fund Advisors, HCM Services, Dugaboy. Sorry, I don't think -- Dugaboy doesn't fit that definition. You said owned and controlled. I don't think that that

1 WATERHOUSE - 10-19-21

2 definition --

3 Q. I said owned and/or controlled.

4 A. I don't -- again, I'm not -- I'm not  
5 the legal expert. I don't think it controls --  
6 he controls Dugaboy, so again, I'm not the  
7 legal person.

8 Q. I'm not asking you for a legal  
9 conclusion, sir. I'm asking you for your  
10 knowledge, okay, as the CFO -- the former CFO  
11 of Highland Capital Management, other than  
12 NexPoint, HCMFA, and HCMF -- HCMS, can you  
13 think of any other entities that were owned  
14 and/or controlled directly or indirectly in  
15 whole or in part by Jim Dondero who received a  
16 loan from Highland Capital Management, L.P.?

17 MS. DANDENEAU: Objection to form.

18 A. HCRE.

19 Q. Any others?

20 A. That is -- that is all I can think  
21 of.

22 Q. And you're aware that from time to  
23 time while you were the CFO, Highland loaned  
24 money to Jim Dondero; correct?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Can we refer to the four  
3 entities that you just named and Mr. Dondero as  
4 the affiliates?

5 A. So that would be Jim Dondero,  
6 NexPoint Advisors, Highland Capital Management  
7 Fund Advisors, and HCRE.

8 Q. And HCMS?

9 A. And HCMS, okay.

10 Q. And can we refer to the loans that  
11 were given to each of those affiliates as the  
12 affiliate loans?

13 A. Yes.

14 Q. And is it fair to say that each of  
15 the affiliates were the borrowers under the  
16 affiliate loans as we're defining the term?

17 MR. RUKAVINA: Objection, legal  
18 conclusion.

19 A. The borrowers are whoever were on  
20 the notes. I don't -- I don't know. I'm not  
21 the legal person.

22 Q. But you --

23 A. I don't know.

24 Q. You do know, as Highland's former  
25 CFO, that each of the affiliates that you have

1 WATERHOUSE - 10-19-21

2 identified tendered notes to Highland; correct?

3 MR. RUKAVINA: Hey, John, will you  
4 just give me a running objection to legal  
5 conclusion to HCM --

6 MR. MORRIS: No. No, if you want to  
7 object --

8 MR. RUKAVINA: I will object every  
9 time. Object to legal conclusion.

10 MR. MORRIS: That is fine.

11 A. Sorry, can you repeat the question?

12 Q. Are you aware that each of the --  
13 that each of the affiliates, as we have defined  
14 the term, gave to Highland a promissory note in  
15 exchange for the loans?

16 MR. RUKAVINA: Objection to the  
17 extent that calls for a legal conclusion.

18 A. I don't.

19 Q. No, you don't know that?

20 A. No, they didn't -- you said they  
21 exchanged a promissory note for a loan. I  
22 don't -- I don't understand that question, so I  
23 said no.

24 Q. At the time of the bankruptcy  
25 filing, did Highland have in its possession

WATERHOUSE - 10-19-21

promissory notes that were signed by each of  
the affiliates?

A. Yes.

Q. To the best of your knowledge,  
during the time that you served as Highland's  
CFO, did Highland disclose to its outside  
auditors all of the loans that were made to  
affiliates?

MR. RUKAVINA: Objection, that calls  
for a legal conclusion.

MS. DEITSCH-PEREZ: I also couldn't  
hear you, John, because there was some  
garbling on -- on the -- on the call.

MR. MORRIS: Folks, I've got to tell  
you this is not going well, and I'm  
reserving my right --

MS. DANDENEAU: John, it was just  
the end of that question. It was just the  
end of that question. I couldn't hear it  
either. Sorry, if you could repeat it,  
please.

MR. MORRIS: That is less than an  
hour into this, but folks are trying to run  
out the clock, and so I'm just going to

1 WATERHOUSE - 10-19-21

2 state that now.

3 MS. DANDENEAU: You know, and,  
4 Mr. Morris, I really object to that. I  
5 mean --

6 MR. MORRIS: Okay.

7 MS. DANDENEAU: -- Mr. Waterhouse  
8 just told you he's trying to listen to your  
9 questions and answer them carefully, and  
10 you have no basis for saying that.

11 MR. MORRIS: Okay.

12 MS. DANDENEAU: This does not --  
13 this is not an experienced witness, so he's  
14 trying to do the best he can.

15 Q. Mr. Waterhouse, during the time that  
16 you served as Highland's CFO, did Highland  
17 disclose to its outside auditors all of the  
18 loans that it made to each of the affiliates  
19 that you have identified?

20 MR. RUKAVINA: Objection, legal  
21 conclusion.

22 A. Yes.

23 Q. To the best of your knowledge, while  
24 you were Highland's CFO, were all of the  
25 affiliate loans described in Highland's audited

1 WATERHOUSE - 10-19-21

2 financial statements?

3 MR. RUKAVINA: Objection, legal  
4 conclusion.

5 A. When an audit was performed, any  
6 loans that were made by Highland to the  
7 affiliates were disclosed to auditors.

8 Q. Are you aware of any loan that was  
9 made to any affiliate that was not disclosed to  
10 the auditors?

11 A. I'm not aware.

12 Q. To the best of your knowledge, did  
13 each of the affiliates who were --  
14 (inaudible) -- loaned from Highland execute a  
15 promissory note in connection with that loan?

16 MR. RUKAVINA: Objection, legal  
17 conclusion.

18 A. Sorry, you -- halfway through the  
19 question it got muffled.

20 Can you repeat that again?

21 Q. To the best of your knowledge, did  
22 every affiliate execute a promissory note in  
23 connection with each loan that it obtained from  
24 Highland?

25 MR. RUKAVINA: Objection, legal



1 WATERHOUSE - 10-19-21

2 conclusion.

3 A. Yes.

4 Q. You are not aware of any loan that  
5 any affiliate ever obtained from Highland where  
6 the affiliate did not give a promissory note in  
7 return; is that fair?

8 A. Yes, I'm not aware.

9 Q. And to the best of your knowledge,  
10 did Highland loan to each affiliate an amount  
11 of money equal to the principal amount of each  
12 promissory note?

13 MR. RUKAVINA: Objection, legal  
14 conclusion.

15 A. Yes.

16 Q. During the time that you served as  
17 CFO, did Highland ever loan money to  
18 Mark Okada?

19 A. I -- I don't recall.

20 Q. Did you ever see any promissory  
21 notes executed by Mark Okada?

22 A. I don't recall.

23 Q. Do you know if Highland ever forgave  
24 any loan that it ever made to Mr. Okada?

25 A. I don't recall.

1 WATERHOUSE - 10-19-21

2 Q. Do you recall if Mr. Okada paid back  
3 all principal and interest due and owing under  
4 any loan he obtained from Highland?

5 MS. DEITSCH-PEREZ: Objection to  
6 form.

7 MS. DANDENEAU: Objection to form.

8 A. I don't recall.

9 Q. Do you recall whether -- during your  
10 time as CFO, whether Highland ever loaned money  
11 to Jim Dondero?

12 A. Yes.

13 Q. To the best of your knowledge, did  
14 Mr. Dondero sign and deliver to Highland a  
15 promissory note in connection with each loan  
16 that he obtained from Highland?

17 A. If you are referring to the  
18 promissory notes that, you know, part of  
19 Highland's records, yes.

20 Q. Okay. You're not aware of any loan  
21 that Mr. Dondero took from Highland that wasn't  
22 backed up by -- by a promissory note with a  
23 face -- with a principal amount equal to the  
24 amount of the loan; correct?

25 A. Am I aware that Jim Dondero took a

1 WATERHOUSE - 10-19-21

2 loan?

3 Q. Without giving a -- let me ask a  
4 better question. I'm sorry, Mr. Waterhouse.

5 Are you aware of any loan that  
6 Mr. Dondero obtained from Highland where he  
7 didn't give a promissory note in return?

8 A. I'm not aware.

9 Q. During the time that you served as  
10 Highland's CFO, did Highland ever forgive any  
11 loans, in whole or in part, that it made to  
12 Mr. Dondero?

13 A. Not that I'm aware.

14 Q. At the time that you served as  
15 Highland's CFO, did Highland ever forgive any  
16 loan, in whole or in part, that it made to any  
17 affiliate as we've defined the term today?

18 A. Not that I'm aware.

19 Q. During the time that you served as  
20 Highland's CFO, did Highland ever forgive, in  
21 whole or in part, any loan that it ever made to  
22 any officer or employee?

23 A. Highland forgave loans to officers  
24 and employees. It may not have been at the  
25 time when my title was CFO.

1 WATERHOUSE - 10-19-21

2 Q. Okay. And so I appreciate the  
3 distinction.

4 Is it fair to say that, to the best  
5 of your knowledge, Highland did not forgive a  
6 loan that it made to an officer or employee  
7 after 2013?

8 MS. DANDENEAU: Objection to form.

9 A. I don't recall.

10 Q. To the best of your knowledge, did  
11 Highland disclose to its auditors every  
12 instance where it forgave, in whole or in part,  
13 a loan that it had made to one of its officers  
14 or employees?

15 A. No.

16 Q. Can you think of -- can you -- can  
17 you identify any loan to an officer or employee  
18 that was forgiven by Highland, in whole or in  
19 part, that was not disclosed to Highland's  
20 outside auditors?

21 A. Look, I don't recall all of the  
22 loans and the loan forgiveness. I just know as  
23 part of the audit process there is a  
24 materiality concept.

25 So if there were loans to employees



WATERHOUSE - 10-19-21

affiliates, as we've defined the term, to collect under certain promissory notes; is that right?

A. Yes.

Q. And are you familiar with the notes that are issue -- at issue in the lawsuits?

MS. DANDENEAU: Objection to form.

A. Generally familiar.

Q. Can we refer to the lawsuits that Highland has commenced against the affiliates collectively as the lawsuits?

A. Yes. And, again, the affiliates are NexPoint, HCMFA, HCMS, and HCRE.

Q. And Mr. Dondero?

A. Okay. See, that is a new -- and now Mr. Dondero is included in your affiliate definition.

Q. I just --

A. I thought affiliates -- I thought affiliates were just the four prior entities, so I just want to be clear.

Q. I appreciate that. So let's -- let's keep them separate and let's refer to the four corporate entities as the affiliates, and

1 WATERHOUSE - 10-19-21

2 Mr. Dondero we will call Mr. Dondero. Okay?

3 A. Okay. Thank you. As you can see,  
4 Mr. Morris, there is a lot of entities -- a lot  
5 here. I just want to be clear.

6 Q. Okay. Now, the affiliates of  
7 Mr. Dondero signed promissory notes that are  
8 not subject to the lawsuit.

9 Do you understand that?

10 MS. DANDENEAU: Objection to form.

11 A. The affiliates and Mr. Dondero  
12 signed --

13 Q. You know what? I will skip it.  
14 That is okay. Okay.

15 From time to time while you were  
16 Highland's CFO, payments were applied against  
17 principal and interests that were due under the  
18 notes that were tendered by the affiliates and  
19 Mr. Dondero; correct?

20 MR. RUKAVINA: Objection to the  
21 extent that calls for a legal conclusion.

22 A. Yes.

23 Q. Did Highland have a process where --  
24 whereby payments would be applied against  
25 principal and interest against the notes that

1 WATERHOUSE - 10-19-21

2 were given by the affiliates and Mr. Dondero?

3 A. Yes.

4 Q. Can you describe the process for me?

5 A. The process, payment should be  
6 applied as laid out in the -- in the promissory  
7 note.

8 Q. From time to time were payments made  
9 that were not required under the promissory  
10 notes?

11 MS. DANDENEAU: Objection to form.

12 A. Yes.

13 Q. Who was responsible for deciding  
14 when and how much the payments would be made  
15 with respect to each of the notes that were  
16 issued by the affiliates and Mr. Dondero?

17 A. Who was responsible for deciding how  
18 much was paid prior to the due date?

19 Q. Yes.

20 A. I don't know.

21 Q. Did you approve of each payment that  
22 was made against principal and interest on the  
23 notes that were given by the affiliates and  
24 Mr. Dondero?

25 MS. DANDENEAU: Objection to form.



1 WATERHOUSE - 10-19-21

2 A. Did I approve the payments? I  
3 approve -- I approve -- if there was cash -- if  
4 there was cash being repaid on a note payment,  
5 yes, I approved in the general sense of being  
6 made aware of the payment and the amount.

7 Q. And are you the person who  
8 authorized Highland's employees to effectuate  
9 those payments?

10 A. Yes.

11 Q. When you gave the instruction to  
12 effectuate the payment, did you obtain  
13 Mr. Dondero's prior approval?

14 A. I mean, it -- I mean, it -- it  
15 depends.

16 Q. Can you think of any instance where  
17 you directed Highland's employees to make a  
18 payment of principal or interest against any  
19 note that was tendered by an affiliate or  
20 Mr. Dondero that Mr. Dondero did not approve of  
21 in advance?

22 A. I can't recall specifically.

23 Q. Can you identify -- withdrawn.

24 Did Mr. Dondero ever tell you that a  
25 payment that was made against principal and

WATERHOUSE - 10-19-21

interest due under one of the notes that was  
tendered by an affiliate or himself should not  
have been made?

A. Yes.

Q. Can you identify the payment for me?

A. It would be for -- for NexPoint  
Advisors.

Q. Okay. And when did Mr. Dondero tell  
you that a payment that you had initiated on  
behalf of NexPoint should not have been made?

A. I wasn't initiating payment. It was  
in the context of the -- I think you used this  
term, "the advisors," so NexPoint Advisors and  
Highland Capital Management Fund Advisors had  
overpaid on certain agreements with Highland  
Capital Management, L.P. And as a part of that  
process, the advisors -- what I was told at the  
time were in talks and negotiations and  
discussions with Highland Capital Management,  
L.P., on offsets in relation to those  
overpayments.

Q. When did this conversation take  
place?

MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 A. I don't recall specifically.

3 Q. Do you recall what year it was?

4 A. Yes.

5 Q. What year did the conversation with  
6 Mr. Dondero take place that you just described?

7 A. 2020.

8 Q. Okay. Do you remember if it was  
9 December 2020?

10 A. It -- it -- I don't -- I don't  
11 recall what month specifically, but it would  
12 have been November or December.

13 Q. And we're talking here about a  
14 payment of principal and/or interest that was  
15 due -- withdrawn.

16 We're talking here about a payment  
17 of principal and interest that was applied  
18 against NexPoint's note; correct?

19 MS. DANDENEAU: Objection to form.

20 A. I don't recall what that payment  
21 consisted of.

22 Q. Is it possible that the payment you  
23 have in mind related to the shared services  
24 agreement?

25 MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 A. No.

3 Q. Are you certain that the payment --  
4 that the payment that you have in mind related  
5 to the promissory note that NexPoint issued in  
6 favor of Highland?

7 MS. DANDENEAU: Objection to form.

8 A. Yes.

9 Q. Okay. Other than that one payment,  
10 can you identify any other instance where  
11 Mr. Dondero told you that a payment should not  
12 have been applied against principal and  
13 interest under any promissory note tendered by  
14 any affiliate or Mr. Dondero?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Objection to  
17 form.

18 A. Not that I recall.

19 Q. Thank you very much.

20 Do you know if Mr. Dondero approved  
21 in advance of each loan made to each affiliate  
22 and himself during the time that you were the  
23 CFO?

24 MS. DEITSCH-PEREZ: Object to the  
25 form.

1 WATERHOUSE - 10-19-21

2 A. Yes, generally.

3 Q. Can you identify any loan that was  
4 ever made to an affiliate or to Mr. Dondero  
5 that Mr. Dondero did not approve of in advance?

6 A. Other than the ones that are in  
7 dispute, I'm not aware.

8 Q. Do you believe that Mr. Dondero did  
9 not approve of each of the loans that are in  
10 dispute in advance of the time that the loan  
11 was made?

12 MS. DANDENEAU: Objection to form.

13 A. Given what is in the dispute, you  
14 know, and -- and -- and the way things might --  
15 yeah, I mean...

16 Q. I am not asking about the dispute,  
17 and it was probably my mistake to follow you  
18 there.

19 Were you aware of every loan made by  
20 Highland to each of its affiliates and  
21 Mr. Dondero while you were the CFO at the time  
22 each loan was made?

23 A. Was I aware of every loan, yes.

24 Q. Okay. And if you put yourself back  
25 in time, do you recall that any of the loans



WATERHOUSE - 10-19-21

that was made against principal and interest on  
any note tendered by any affiliate or  
Mr. Dondero that you didn't know about in  
advance?

A. I don't recall.

Q. Other than Mr. Dondero -- withdrawn.

Did anybody at Highland have the  
authority to make a payment against principal  
and interest due under a loan given to the  
affiliates and Mr. Dondero without your  
knowledge and approval?

MS. DANDENEAU: Objection to form.

A. Sorry, there was -- to make a  
payment on an affiliate loan, what you are  
saying would it require my knowledge and  
approval, yes.

Q. Okay. I appreciate that. Thank  
you.

Did anybody at Highland have the  
authority, to the best of your knowledge, to  
effectuate a loan to an affiliate without  
Mr. Dondero's prior knowledge and approval?

MS. DANDENEAU: Objection to form.

A. I can't speak for all, but







1 WATERHOUSE - 10-19-21

2 terms of the agreement?

3 A. That there were certain milestones  
4 that had to be reached.

5 Q. Do you have any understanding of the  
6 terms of the agreement between Mr. Dondero and  
7 Nancy Dondero concerning any of the notes  
8 issued by the affiliates or Mr. Dondero other  
9 than that there have to be milestones reached?

10 MS. DEITSCH-PEREZ: Object to the  
11 form.

12 A. There are milestones, I found out  
13 yesterday, or there was some --

14 MS. DANDENEAU: Okay. I'm just  
15 going to object to the extent that you  
16 learned anything in conversations with  
17 counsel, please don't reveal -- that is  
18 privileged, and don't reveal any privileged  
19 communications.

20 THE WITNESS: Okay.

21 A. So I'm not aware of anything else.

22 Q. Do you know what the milestones  
23 were?

24 MS. DANDENEAU: Objection to form.

25 A. I don't.

1 WATERHOUSE - 10-19-21

2 Q. Do you know anything about -- do you  
3 know what promissory notes the agreement  
4 covered?

5 A. I don't.

6 Q. Do you know if -- if Jim and Nancy  
7 Dondero entered into one agreement or more than  
8 one agreement?

9 MS. DEITSCH-PEREZ: Object to the  
10 form.

11 A. I don't know.

12 Q. Do you know if the agreement is in  
13 writing?

14 A. I don't know.

15 Q. How did you learn of the existence  
16 of the agreement?

17 MS. DANDENEAU: Objection to form.  
18 Again --

19 A. I don't -- I don't recall who told  
20 me.

21 Q. You have no recollection of who told  
22 you about this agreement between Jim and Nancy  
23 Dondero?

24 MS. DEITSCH-PEREZ: Object to the  
25 form.

1 WATERHOUSE - 10-19-21

2 A. I don't recall.

3 Q. Do you recall how you learned of the  
4 agreement?

5 Was it in a meeting? Was it in a  
6 phone call? Was it in an email?

7 A. I don't recall.

8 Q. Do you recall when you learned of  
9 the agreement?

10 A. Not specifically.

11 Q. Do you recall what year you learned  
12 of the agreement?

13 A. In -- look, I mean, there are so  
14 many notes. I may be getting -- I believe it  
15 was 2020.

16 Q. All right. I'm not asking about  
17 notes, sir. I'm asking about the agreement  
18 that you testified you knew about between Jim  
19 and Don- -- Nancy Dondero. Okay.

20 Do you understand my question now?  
21 Should I ask my question again?

22 A. Yeah, sure. Go ahead.

23 Q. I'm going to use the word  
24 "agreement" to refer to the agreement that  
25 Mr. Dondero and Nancy Dondero entered into

1 WATERHOUSE - 10-19-21

2 where you understood that certain milestones  
3 had to be reached. Okay?

4 A. Uh-huh.

5 MS. DANDENEAU: Objection.

6 MS. DEITSCH-PEREZ: Object to the  
7 form.

8 MR. MORRIS: Just defining a term,  
9 what is the objection.

10 MS. DEITSCH-PEREZ: The objection --

11 MR. MORRIS: I will move on. I will  
12 move on.

13 MS. DEITSCH-PEREZ: John --

14 Q. Sir, are you okay with that  
15 definition of agreement?

16 A. Okay.

17 Q. Okay. So you don't recall who --  
18 who informed you of the existence of the  
19 agreement; is that right?

20 A. I don't recall.

21 Q. You don't recall who told you the  
22 terms of the agreement.

23 Do I have that right?

24 A. Correct.

25 Q. And you don't recall if you learned





1 WATERHOUSE - 10-19-21

2 Jim Seery.

3 Q. Did you tell anybody at DSI about  
4 this agreement?

5 A. No.

6 Q. Did you tell any of Highland's  
7 independent directors about this agreement?

8 A. No.

9 Q. Did you tell anybody at Pachulski  
10 Stang Ziehl & Jones about this agreement?

11 A. No.

12 Q. Did you tell any employee of  
13 Highland about this agreement?

14 A. No.

15 MS. DANDENEAU: Mr. Morris, it has  
16 been an hour and a half. Is this a good  
17 time for a break?

18 MR. MORRIS: Sure.

19 Q. Mr. Waterhouse, I will just remind  
20 you that during the break please don't speak  
21 with anybody about the deposition, the  
22 substance of your testimony or anything else  
23 concerning the deposition. Okay?

24 A. Yes.

25 MR. MORRIS: So it is 11:02. We're



1 WATERHOUSE - 10-19-21

2 at 11:02 your time. Let's come back, I  
3 guess, at 15 -- at 11:15 your time.

4 VIDEOGRAPHER: We're going off the  
5 record at 11:02 a.m.

6 (Recess taken 11:02 a.m. to 11:20 a.m.)

7 VIDEOGRAPHER: We are back on the  
8 record at 11:20 a.m.

9 Q. Mr. Waterhouse, did you speak with  
10 anybody during the break about this deposition?

11 A. No.

12 MS. DANDENEAU: Other than -- other  
13 than his counsel.

14 Q. Did you speak to your counsel about  
15 the substance of your deposition today?

16 A. No, I didn't bring it up.

17 Q. I didn't ask you if you brought it  
18 up. I asked you if you had any conversation  
19 with your lawyer about the substance of your  
20 deposition.

21 MS. DANDENEAU: Yes, he did.

22 Q. Can you tell me what the -- you  
23 discussed?

24 MS. DANDENEAU: No, I object to

25 that. He's not going to answer. That is a



1 WATERHOUSE - 10-19-21

2 have to.

3 Q. Mr. Waterhouse, after learning about  
4 the agreement, did you ask anybody if the  
5 agreement was reflected in a writing?

6 MS. DANDENEAU: Objection to form.

7 A. No.

8 Q. Did you ask anybody if the terms of  
9 the agreement were memorialized anywhere?

10 MS. DANDENEAU: Objection to form.

11 MR. MORRIS: What is the --

12 A. No.

13 MS. DANDENEAU: Well, because you  
14 keep talking about this agreement and I --  
15 I -- I think, Mr. Morris, that is really  
16 not clear what you mean by "the agreement."  
17 And maybe you can just go back and restate  
18 what that is.

19 MR. MORRIS: Okay. Your client has  
20 agreed with me twice on the definition, but  
21 I will try one more time.

22 Q. Mr. Waterhouse, do you understand  
23 that when I use the term "agreement," I'm  
24 referring to the agreement between Jim and  
25 Nancy Dondero concerning certain promissory





1 WATERHOUSE - 10-19-21

2 don't know who, I don't know when, as you  
3 asked, sometime in '21, someone told me about  
4 this -- or I don't honestly know -- I don't  
5 even recall exactly how I was made aware of  
6 this, but I was. I don't know -- I don't know  
7 any of these details, and I'm getting -- again,  
8 there is, you know, I -- I -- I had a passing  
9 conversation with -- with Jim at some point  
10 on -- on some -- on the executive comp, and I'm  
11 getting confused of what is what, because  
12 again, I don't know any of these details.

13 Q. Okay. Let me try again,  
14 Mr. Waterhouse, and I apologize.

15 Are you aware of any agreement  
16 between Jim Dondero and Nancy Dondero  
17 concerning any promissory note that was given  
18 to Highland by any affiliate or Mr. Dondero?

19 MS. DEITSCH-PEREZ: Object to the  
20 form.

21 A. I've heard of an agreement. That  
22 is -- that is -- I mean, if you are using aware  
23 as heard, sure.

24 Q. And you understand that one of the  
25 terms of the agreement is that it was based on



1 WATERHOUSE - 10-19-21

2 form.

3 Q. You can answer.

4 A. I don't -- I heard about the  
5 agreement. I don't know anything -- I heard  
6 there was an agreement. That is -- again, as I  
7 testified before -- I said before, heard about  
8 it, don't know the details. I believe it was  
9 sometime this year.

10 Q. Do you have any personal knowledge  
11 about the terms of the agreement, sir?

12 MS. DANDENEAU: Objection to form.

13 A. Other than what I have previously  
14 discussed, I don't -- I don't know.

15 Q. Did -- did Mr. Dondero tell you  
16 about the existence of the agreement?

17 A. I don't recall.

18 Q. Do you recall the source of your  
19 information when you learned about the  
20 agreement?

21 A. No, I don't -- I don't recall. I  
22 don't remember. I just -- I heard about it  
23 generally. I don't remember -- I don't  
24 remember who, how, if, how. I don't remember.

25 Q. You know, Mr. Waterhouse, I just





1 WATERHOUSE - 10-19-21

2 Q. Okay. Well, I hope that you  
3 appreciate what I'm saying here,  
4 Mr. Waterhouse.

5 MS. DANDENEAU: All right. Let's go  
6 ahead and ask questions, and again, you're  
7 entitled to probe his -- his knowledge  
8 of -- whatever knowledge he has about  
9 this -- this agreement and --

10 MR. MORRIS: That is what I'm doing.

11 MS. DANDENEAU: -- he will answer  
12 the questions to the best that he can.

13 MR. MORRIS: That is what I'm doing.

14 Q. Mr. Waterhouse, I take it you do not  
15 know which promissory notes issued by which  
16 affiliates or Mr. Dondero are the subject of  
17 this agreement; do I have that right?

18 A. Yes, I don't -- I don't know.

19 Q. Do you know of any way to determine  
20 which promissory notes issued by the affiliates  
21 and Mr. Dondero are the subject of this  
22 agreement other than asking Jim or Nancy  
23 Dondero?

24 MS. DANDENEAU: Objection to form.

25 A. I don't know.

1 WATERHOUSE - 10-19-21

2 Q. Did you ever make --

3 A. I don't know anything about these  
4 agreements.

5 Q. Did you ever make any effort to  
6 determine which promissory notes are subject to  
7 this agreement?

8 A. No.

9 Q. Did you ever ask anybody which  
10 promissory notes are subject to this agreement?

11 A. No.

12 Q. Do you know if there is a list  
13 anywhere of the promissory notes that are  
14 subject to this agreement?

15 A. I'm not aware.

16 Q. Have you ever seen the terms of the  
17 agreement written down anywhere?

18 A. No.

19 Q. Have you ever asked anybody whether  
20 the terms of the agreement were written down  
21 anywhere?

22 A. I have not.

23 Q. Did learning about the agreement  
24 cause you to do anything in response?

25 MS. DANDENEAU: Objection to form.



1 WATERHOUSE - 10-19-21

2 as to the reason why Highland had its annual  
3 financial statements audited each year.

4 A. From -- from time to time, they were  
5 used -- or asked for, as part of diligence or  
6 transactions or -- or things of that nature.

7 Q. And were they given to third parties  
8 for purposes of diligence or transactions from  
9 time to time?

10 A. As far as I'm aware, yes.

11 Q. And was it your understanding as the  
12 CFO that the third parties who received the  
13 financial statements in diligence or  
14 transactions was going to rely on those?

15 MS. DANDENEAU: Objection to form.

16 A. I don't know -- I don't know gen --  
17 I don't know specifically what they were going  
18 to rely on. You know, we would get requests  
19 for audited financial statements. I don't know  
20 what they were relying on.

21 Q. And --

22 A. You would have to ask them.

23 Q. Did you personally play a role in  
24 PwC's annual audit and the conduct of the  
25 audit?









WATERHOUSE - 10-19-21

If you -- if you talk to my team members, I'm not micromanaging people. I want people to learn and grow in their function so they can go on and do bigger and better things with their careers.

And so, yes, generally I was responsible for it, but I wanted the team to learn and grow and be responsible for the bulk of the audit.

Q. Did you personally review each audit report before it was finalized to satisfy yourself that it was accurate?

A. I don't -- I don't recall, you know, for every single -- we're talking 2016, there would have been three years, 2016 to '17, '18. I don't -- we're -- we're going back five years-plus. I don't -- you know, I don't recall.

Q. Did you have a practice that you employed to make sure that you were satisfied that Highland's audit reports were true and accurate to the best of your knowledge?

A. I mean, our -- the practice was set up with our -- the -- the practice to put







1 WATERHOUSE - 10-19-21

2 materiality?

3 A. Yes.

4 Q. And for purposes of the audit, did  
5 PwC set the level of materiality each year?

6 A. Yes.

7 Q. Did that number change over time?

8 A. I'm not aware of what materiality is  
9 every single year, so -- but, you know, this  
10 number would likely fluctuate.

11 Q. Okay. I'm going to go back to a  
12 question I asked you earlier today. And that  
13 is in connection -- this letter is issued in  
14 connection with the audit for the period ending  
15 12/31/2018; correct?

16 A. Yes.

17 Q. Okay. And is it fair to say that if  
18 any -- actually, withdrawn. I'm going to take  
19 it outside of this.

20 If Highland ever forgave the loan to  
21 any affiliate or any of its officers or  
22 employees, in whole or in part, to the best of  
23 your knowledge, would that forgiveness have  
24 been disclosed in the audited financial  
25 statements if it exceeded the level of

WATERHOUSE - 10-19-21

materiality that PwC established?

MS. DANDENEAU: Objection to form.

A. So, again, during my tenure as CFO, and -- Highland -- it was -- it is required to disclose any affiliate loans that are in excess of materiality.

Now, the forgiveness of those loans may or may not -- I mean, since materiality fluctuates every year, a -- you know, if a loan was forgiven, it may or may not, you know -- and, look, I would want to consult the guidance around this.

It is not something we do -- you know, it is not -- you know, GAAP can be and disclosures can be very specialized so, again, we want to consult the guidance. But we would see if and what would need to be disclosed if it were deemed immaterial.

Q. Did you and Mr. Dondero sign management representation letters of this type in each year in which you served as Highland's CFO?

A. I -- I -- I will speak for myself. I signed them. There may have been others that

1 WATERHOUSE - 10-19-21

2 signed as well. I don't -- I don't recall.

3 Q. But to the best of your knowledge,  
4 you, personally, signed a management  
5 representation letter in connection with  
6 Highland's audit each year that you served as  
7 the CFO; correct?

8 A. I would say generally speaking,  
9 Mr. Morris. I don't recall for every single  
10 year, you know, generally, but I would want to  
11 refer to all the rep letters and see who signed  
12 them.

13 Q. Do you recall Highland having its  
14 financial statements audited in any year during  
15 the period that you were a CFO where you didn't  
16 sign the management representation letter?

17 A. I don't recall. But, John, we're  
18 going back five, six, seven, eight, nine,  
19 decade. I don't -- I don't remember.

20 Q. I don't want to go back that many  
21 decades, but I'm just asking you if you recall  
22 that there was you didn't sign it?

23 A. I -- I -- I don't, but my memory  
24 is -- again, I -- I -- I can't tell you what I  
25 did in 2012. I mean, I think generally, yes,

1 WATERHOUSE - 10-19-21

2 but I don't -- I don't know for sure, and I  
3 would want to rely on the document.

4 Q. Let me ask the question a little bit  
5 differently then.

6 Do you have any reason to believe  
7 that Highland had its annual financial audit  
8 and you did not sign a management  
9 representation letter in connection with that  
10 audit?

11 MS. DANDENEAU: Objection to form.

12 A. I don't believe it would, but,  
13 again, I would want to -- I don't recall and I  
14 would want to confirm it to -- to make, you  
15 know, an affirmative -- to give an affirmative  
16 answer.

17 Q. Do you know whether PwC required  
18 management to sign management representation  
19 letters?

20 MS. DANDENEAU: Objection to form.

21 A. Yes. I mean, it -- management  
22 representation letters are signed by  
23 management.

24 Q. Okay. And do you know -- do you  
25 have any understanding as to why PwC requires





1 WATERHOUSE - 10-19-21

2 A. That is -- that is -- other than  
3 what I said, it is -- it is -- it is required  
4 so -- to ensure that the -- you know, there  
5 is -- there is completeness in what is being  
6 audited.

7 Q. Did you -- did you have a practice  
8 whereby you and Mr. Dondero conferred about the  
9 management representation letters before you  
10 signed them?

11 A. No.

12 Q. Did you have a practice --  
13 withdrawn.

14 Do you see just the next sentence  
15 after the materiality, there is a sentence that  
16 states: We confirm, to the best of our  
17 knowledge and belief, as of June 3rd, 2019, the  
18 date of your report, the following  
19 representations made to you during your audit.

20 Do you see that sentence?

21 A. Yes.

22 Q. Okay. Did you understand when you  
23 signed this letter that you were confirming the  
24 representations that followed?

25 A. When I signed this management

1 WATERHOUSE - 10-19-21

2 letter -- representation letter, yes.

3 Q. Okay. Did you discuss this letter  
4 with Mr. Dondero before you signed it?

5 A. I don't recall.

6 Q. Do you recall if Mr. Dondero asked  
7 you any questions before he signed the letter?

8 A. I don't recall.

9 Q. Do you recall if you asked  
10 Mr. Dondero any questions before you signed  
11 this letter?

12 A. I don't recall.

13 Q. Is it fair to say that Mr. Dondero  
14 did not disclose to you the existence of the  
15 agreement that we have -- as we've defined that  
16 term prior to the time you signed this letter?

17 MS. DANDENEAU: Objection to form.

18 A. I don't think I understand the  
19 question. So, again, you are saying, did  
20 Mr. Dondero not disclose to me the existence of  
21 this letter?

22 Q. No, I apologize.

23 Did Mr. Dondero disclose to you the  
24 existence of the agreement prior to the time  
25 you signed this letter on June 3rd, 2019?

1 WATERHOUSE - 10-19-21

2 A. The agreement -- the agreement that  
3 we talked about earlier?

4 Q. Correct.

5 A. Look, as I said earlier, the first  
6 time I heard of this agreement was sometime  
7 this year.

8 Q. Okay. Can we turn -- let's just  
9 look at a couple of items on the list. If we  
10 can go to page 33416. Do you see in Number 35  
11 it talks about the proper recording or  
12 disclosure in the financial statements of ND  
13 relationships and transactions with related  
14 parties.

15 Do you see that?

16 A. I do.

17 Q. As the CFO, do you have any  
18 understanding as to whether Dugaboy is a  
19 related party?

20 A. I don't recall.

21 Q. Do you know whether any of the  
22 affiliates are related parties?

23 A. If -- if it was NexPoint, HCMFA,  
24 HCMS, HCRE, yeah, if -- if that is the  
25 affiliate definition, and there. In ASC 850 --

WATERHOUSE - 10-19-21

again, I mean, I haven't looked at ASC 850 in quite some time, but, you know, if -- if there is a control language, you know, ASC 850, would that -- that section in GAAP would -- would pick up and define what are related parties.

So, you know, like I said, if -- one of the four entities I just described, if -- if they are in that control definition of ASC 850, they would be picked up in 35D.

Q. Do you -- do you have any reason to believe that they would be picked up in that definition, based on your knowledge and experience?

A. I -- I believe that entities controlled under GAAP are -- are affiliates.

Q. Okay. Would Mr. Dondero also qualify as a related party for purposes of Section 35D, to the best of your knowledge?

A. Yeah, I don't -- I don't know. I would think -- I would have to read the code section to see if someone personally -- is it talking about related parties. So, look, if your own in control, yeah, I mean, I would have to read the section.

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Q. To the best of your knowledge, was the existence of the agreement ever disclosed to you?

A. I'm not -- I'm not aware.

Q. Do you recall if the agreement was disclosed in Highland's audited financial statements?

A. I don't -- I don't remember if it was in every Highland's audited financial statements during my tenure. We would have to go through the financial statements to see what was disclosed, but I'm not -- I mean, as I sit here today, I'm not aware.

Q. That is all I'm asking for.

A. I'm not aware.

Q. Can we go to the next page, please, look at 36. 36 says, we have disclosed to the identity of the partnership's related relationships and all the related party relationships and transactions of which we are

Do you see that?

A. Yes.

Q. To the best of your knowledge, as of

WATERHOUSE - 10-19-21

June 3rd, 2019, did Highland disclose to PwC the identity of the partnership's related parties and all the related party relationships and transactions of which it was aware?

A. I mean, I can speak for myself as signer of this representation letter. I disclosed what -- what, you know, what -- what -- what I knew. Sorry, look, yes, so I -- I disclosed what I knew.

Q. Okay. Can we go to page 419. Do you see at the end there is a reference to events that occurred since the end of the fiscal year and the date of the letter?

A. Yes.

Q. And were you aware of that -- of that provision of the management representation letter before you signed the document?

A. Yes.

Q. Do you have an understanding as to why PwC asked for that confirmation of that particular part of the management representation letter?

A. It is -- it is -- it is just -- it is a typical audit request.

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MR. MORRIS: I will assure you we will put every document in the chat room.

A. Yes.

A. Yes.

MS. CANTY: I'm sorry, John, did you  
ing?

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WATERHOUSE - 10-19-21

page. I think it is 215. Yes, stop right there, just above -- I'm sorry, I want to see just the date of the report.

Q. Okay. Do you see at the bottom of that page there, Mr. Waterhouse, PricewaterhouseCoopers has signed this audit report?

A. Yes, I see their signature.

Q. Okay. And it is the dated same day as your management representation letter; is that right?

A. It is -- yes, it is the same day.

Q. Was that the practice to sign the management representation letter on the same day that the audit report was signed?

A. Yes, that is typical in every audit.

Q. Can we just scroll down to the balance sheet on the next page.

Do you see that there is a line there that says, Notes and Other Amounts Due from Affiliates?

A. Yes.

Q. Does that line, to the best of your knowledge, include the amounts that were due

WATERHOUSE - 10-19-21

under the affiliate under the notes signed by  
the affiliates and Mr. Dondero?

MR. RUKAVINA: Objection to the extent that calls for a legal conclusion.

A. I mean, I would want to see the detail and the build to this \$173,398,000, but, yes, I mean, if -- if -- given what we discussed before, you know, it -- it should capture that.

Q. And -- and while you were the CFO of Highland, were all notes held by Highland that were issued by an affiliate or Mr. Dondero carried as assets on Highland's balance sheets?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Object to form.

A. I don't -- I don't know how else they would be carried.

Q. Okay. Can you think of any -- are you aware of any promissory note issued by an affiliate or Mr. Dondero that was not carried on Highland's audited financial balance sheets?

A. I'm -- I'm -- I'm not aware.

Q. Okay. Are you aware of any category of asset on Highland's balance sheet in which

1 WATERHOUSE - 10-19-21

2 any of the promissory notes issued by an  
3 affiliate or Mr. Dondero would have been  
4 included?

5 MS. DANDENEAU: Objection to form.

6 A. Sorry, am I aware of any asset of an  
7 affiliate being included --

8 Q. That -- let me -- let me try again.

9 Do you see there is a number of  
10 different assets that are described on this  
11 balance sheet?

12 A. Yes.

13 Q. One of the assets that is described  
14 is Notes and Other Amounts Due from Affiliates;  
15 right?

16 A. Yes.

17 Q. And it is reasonable to conclude  
18 that the notes from the affiliates and  
19 Mr. Dondero are included in that line item;  
20 right?

21 A. Yes, based on this description.  
22 Again, I would want to see a build of this to  
23 100 percent confirm, but based on the  
24 description, the asset description, it is -- it  
25 is likely.

1 WATERHOUSE - 10-19-21

2                    Now, does that mean absolute? I  
3    don't know.

4 Q. Do you have any reason to believe  
5 that the promissory notes would have been  
6 carried on the balance sheet in a category  
7 other than Notes and Other Amounts Due from  
8 Affiliates?

9           A.       If they were deemed -- no.  If they  
10       were deemed an affiliate, you know, under GAAP,  
11       they should be carried in that line.  
12       Otherwise, it would go into another line.

13 Q. Okay. And do you see the total  
14 asset base as of December 31st, 2018, was  
15 approximately \$1.04 billion?

16                    A.        Yes.

17 Q. Is my math correct that the Notes  
18 and Other Amounts Due from Affiliates  
19 constituted approximately 17 percent of  
20 Highland's assets as of the end of 2018?

21           A.       Well, so how are you defining  
22   Highland?

23 Q. Highland Capital Management, L.P.,  
24 the entity that this audit is subject to -- or  
25 the subject of.

1 WATERHOUSE - 10-19-21

2           A.       On a consolidated or unconsolidated  
3   basis?

4 Q. I'm looking at the balance sheet.  
5 It is a consolidated balance sheet. Okay?

6 Does the Notes and Other Amounts Due  
7 from Affiliates constitute approximately  
8 17 percent of the total assets of Highland  
9 Capital Management, L.P., on a consolidated  
10 basis?

11 MS. DANDENEAU: Objection to form.

12           A.       I don't have a calculator in front  
13       of me but I will take your math, if you are  
14       taking the 173 divided by the billion.

15 Q. Okay.

16           A.       If that is accurate, yes. But,  
17   again, on a consolidated basis.

18 Q. And on an unconsolidated basis the  
19 percentage would be higher; correct?

20           A.       I -- no. I don't know.

21 Q. Well, okay. That is fair.

22 MR. MORRIS: Can we turn to  
23 page 241, please.

24 Q. Do you see that this is a section of  
25 the audit report that is entitled Notes and

1 WATERHOUSE - 10-19-21

2 Other Amounts Due from Affiliates?

3           A.     Sorry, I can't see the -- the --

4 Q. It is at the top.

5           A.       Notes and Other Amounts Due from  
6   Affiliates, yes, I see that.  I don't -- I  
7   don't have a page number, but I'm on a page  
8   that says at the top:  Notes and Other Amounts  
9   Due from Affiliates.

10 Q. Okay. And that is the same title of  
11 the line item on the balance sheet that we just  
12 looked at; right? Notes and Other Amounts Due  
13 from Affiliates?

14                    A.        Yes.

15 Q. And is it your understanding, based  
16 on your experience and knowledge as the CFO,  
17 that this is the section of the narrative that  
18 ties into the line item that we just looked at?

19                   A.       Yes.

20 Q. And is this section of the audit  
21 report intended to describe and disclose all of  
22 the material facts concerning the Notes and  
23 Other Amounts Due from Affiliates?

24 MS. DANDENEAU: Objection, form.

25           A.     This -- these notes -- these notes

















WATERHOUSE - 10-19-21

value is the line item that you showed me earlier that is in Notes and Other Amounts Due from Affiliates.

Q. Okay. Is another way to say this is that the fair market value of the notes equals the principal amount and -- withdrawn.

Is the fair way to interpret this that the fair market value of the notes equals all remaining unpaid principal and interest due under the notes?

MS. DANDENEAU: Object to the form.

MS. DEITSCH-PEREZ: Objection, form.

A. I don't know the answer to that, because I don't recall where -- where any -- where -- in what line item was the interest component reported.

Q. All right. Well, if we look in this audit report, you will see in the middle of the first paragraph, for example, it states that as of December 31st, 2018, total interest and principal due on outstanding promissory notes was approximately \$5.3 million.

Do you see that?

A. I do.







WATERHOUSE - 10-19-21

decision was made as to not put HCMFA into a position where it didn't have sufficient assets to pay for the demand note.

Q. And at the time the agreement was entered into, pursuant to which the partnership wouldn't demand payment, did HCMFA have insufficient assets to satisfy the notes if a demand had been made?

MS. DANDENEAU: Objection to form.

A. I don't have HCMFA's financial statements in front of me as of 12/31/18.

Q. Was there a concern that HCMFA would be unable to satisfy its demands under the notes if demand was made?

MS. DANDENEAU: Objection to form.

A. Well, there is -- I don't recall -- I mean, there is something, right, in place to basically not demand payment until May 31, 2021 as detailed here.

Q. And who made the decision to enter into -- who made the decision on behalf of Highland not to demand payment until May 31st, 2021?

A. I'm trying to remember. I don't





WATERHOUSE - 10-19-21

Allocation Fund, which was a -- a fund managed by Highland Capital Management Fund Advisors. There was a -- we -- I'm just telling you, there was -- there was -- there was a -- a ultimately a NAV error found in this fund while it was an open-ended fund and, you know, there were amounts owed by the advisor in -- in relation to that NAV error.

There were also, for the same fund, that same fund was ongoing an open-end-to-close-end conversion, and as part of that proposal, shareholders who voted for the conversion received compensation from the advisor.

Q. All right. Now, the events that you're describing occurred in the spring of 2019; right?

A. These started back -- I think, I mean --

Q. I apologize.

A. -- that -- I mean, the answer to that is no.

Q. I apologize, the loans that were made in connection with the events that you're



1 WATERHOUSE - 10-19-21

2    what is the reason you recall Highland lending  
3    money to NexPoint?

4           A.       I mean, I was just -- I just -- I  
5       just recall. I mean, I just -- I don't  
6       remember why.

7 Q. I understand. And I'm asking you if  
8 you recall --

9           A.       Oh, why -- I thought you say --  
10   NexPoint Advisors was launching a fund which  
11   is -- I believe that the legal name is NexPoint  
12   Capital, Inc. And it -- it provided a  
13   co-invest into that fund.

14                   And, from what I remember, the --  
15   the -- that NexPoint borrowed money from  
16   Highland at the time to make that co-invest.

17 Q. So this was an investment that  
18 NexPoint was required to make; is that right?

19 MS. DANDENEAU: Objection to form.

20           A.       I don't know if it was required to  
21    make, I don't recall that, or if it just made  
22    it.

23 Q. Okay. But your recollection is that  
24 NexPoint made an investment and they borrowed  
25 money from Highland to finance the investment.

1 WATERHOUSE - 10-19-21

2 Do I have that right?

3                    A.        Yes.

4 Q. How about HCRE? Do you know why  
5 HCRE borrowed money from Highland?

6 A. I don't remember specifically.

7 Q. Do you remember generally?

8           A.     Generally, yeah -- I mean, yes.

9 Q. Can you tell me your general  
10 recollection as to why Highland loaned money to  
11 HCRE?

12           A.       For -- for -- for investment  
13   purposes.

14           Q.       So HCRE made the investment and it  
15       obtained a loan, or loans, from Highland in  
16       order to finance that investment or those  
17       investments.

18 Do I have that right?

19           A.     I mean, I -- you know, generally.

20 Q. Okay. How about Highland Management  
21 Services, Inc.?

22 Do you have any recollection as to  
23 why HCMS borrowed money from Highland?

24           A.     Generally.

25 Q. What is your general recollection as



1 WATERHOUSE - 10-19-21

2 to why HCMS borrowed money from Highland?

3 A. For -- for investment purposes.

4 Q. So it is the same thing, HCMS wanted  
5 to make investments and it borrowed money from  
6 Highland in order to finance those investments;  
7 is that right?

8 A. I mean, yes, generally. I mean, I  
9 can't -- I don't -- on the services, there --  
10 there are several loans in these schedules.  
11 You know, I can't remember why every single one  
12 of these were made, but I would say, yeah, I  
13 mean, generally.

14 Q. Okay. I appreciate that.

15 MR. MORRIS: Let's go to the page  
16 with Bates No. 251. La Asia, are you  
17 there?

18 MS. CANTY: Sorry, John. It went  
19 out for a minute. Can you say that again.  
20 I don't know what is going on.

21 MR. MORRIS: The page with Bates  
22 No. 251, can we go to that.

23 MS. CANTY: Yes, sorry.

24 MR. MORRIS: Keep going to the  
25 bottom. Yeah, there you go.

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1 WATERHOUSE - 10-19-21

2 subsequent event relating to affiliate loans be  
3 captured in this section if they were -- if  
4 they were made after the end of the fiscal year  
5 and prior to the issuance of the audit report?

6 A. Yes, if they were deemed material or  
7 disclosable.

8 Q. Okay. I appreciate that.

9 Do you see the next to the last  
10 entry there? It says, Over the course of 2019  
11 through the report date, HCMFA issued  
12 promissory notes to the partnership in the  
13 aggregate amount of \$7.4 million?

14 A. Yes.

15 Q. And does that refresh your  
16 recollection that those are the notes that  
17 related to the NAV error that you mentioned  
18 earlier?

19 A. I don't -- I don't remember the  
20 exact. Again, there are -- I mentioned two  
21 line items; right?

22 Q. Yes.

23 A. I mean, it was the GAAP conversion  
24 process plus the -- the NAV error. I don't  
25 have the details. I don't recall specifically

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WATERHOUSE - 10-19-21

statements, yes, they -- they -- they should be  
and they were likely disclosed.

Q. Now, there is no statement concerning the 2019 notes about the forbearance that we looked at in the affiliated note section of the report; right?

MS. DANDENEAU: Objection to form.

Q. I'll withdraw. That was bad.

Do you recall when we were looking at the paragraph concerning HCMFA earlier it had that disclosure about the agreement whereby Highland wouldn't ask for demand on the -- on the HCMFA notes?

A. Yes.

Q. That forbearance disclosure is not made with respect to the 2019 notes; right?

A. Not -- look, not that I can recall,  
unless -- unless it was done at a subsequent  
day.

Q. Right. And it is not in the subsequent event section that we're looking at right now where the 2019 notes are described; right?

A. Right. But this is through

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1 WATERHOUSE - 10-19-21

2 Q. Okay. PricewaterhouseCoopers served  
3 as HCMFA's outside auditors as well; correct?

4 A. Yes.

5 Q. Do you see that this audit report is  
6 signed on June 3rd, 2019, just like the  
7 Highland audit report?

8 A. That is correct.

9 Q. And did the process of -- of  
10 preparing HCMFA's audit report, was that the  
11 same process that Highland followed when it did  
12 its audit report at this time?

13 A. I mean, it is a different entity.  
14 There are different assets. You know, it --  
15 it -- it is -- as you saw, Highland's  
16 financials are on a consolidated basis. This  
17 is different, so it is under the same control  
18 environment and team.

19 Q. Okay. I appreciate that. So the  
20 same control environment and team participated  
21 in the preparation of the audit for Highland  
22 and for HCMFA at around the same time; correct?

23 A. Yes.

24 MR. MORRIS: Can we go to page 17 of  
25 the report. I don't have the Bates number.

WATERHOUSE - 10-19-21

Q. Okay. Do you see that just like  
land's audited financial report, HCMFA's  
ted financial report also has a section  
ted to subsequent events?

A. Yes.

Q. And am I reading this correctly that as Highland had done, HCMFA disclosed in audited financial report a subsequent event related to the issuance of promissory notes to Highland in the aggregate amount of \$10 million in 2019?

A. That is what I see in the report.

Q. And you were the treasurer of HCMFA  
at the time; right?

A. Yes, to the best of my knowledge.

Q. And did anybody ever tell you prior to the time of the issuance of this audit report that that sentence relating to HCMFA's notes was inaccurate or wrong in any way?

A. Not that I recall.

Q. As you sit here right now, has anybody ever told you that that sentence is accurate or wrong in any way?

A. Not that I recall.

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A. Yes, I am looking at it on the  
en.

A. I went through some of these  
ments with my counsel here yesterday

Do you see Exhibit 1 is a  
on promissory note back in 2019?

Q. And this is a demand note, right, if you look at Paragraph 2?

Q. And this is a note where the maker is CMFA, and Highland is the payee; right?

MR. MORRIS: And if we can scroll  
can we just see Mr. Waterhouse's  
ture.

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1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. And if we go to the bottom, can we  
4 just confirm that that is your signature?

5 A. Yes.

6 Q. And together these notes are the  
7 notes that are referred to both in Highland and  
8 HCMFA's audited financial reports in the  
9 subsequent event sections; correct?

10 MS. DANDENEAU: Objection to form.

11 A. They -- they -- they totaled  
12 \$7.4 million, so presumably, yes.

13 Q. Okay. And you were authorized to  
14 sign these two notes; correct?

15 MR. RUKAVINA: Objection, legal  
16 conclusion.

17 A. Yeah. I mean, I'm -- I was the  
18 officer of -- of HCMFA. You know, I -- I'm not  
19 the legal expert on -- on what that -- what  
20 that confers to me or what it doesn't. I mean,  
21 that is my signature on the notes.

22 Q. And you believed you were authorized  
23 to sign the notes; is that fair?

24 A. I signed a lot of documents in my  
25 capacity, just because it is operational in

1 WATERHOUSE - 10-19-21

2 nature. So, you know, to me this was just  
3 another document, to be perfectly honest.

4 Q. Sir, would you have signed  
5 promissory notes with the principal amount of  
6 \$7.4 million if you didn't believe you were  
7 authorized to do so?

8 MS. DANDENEAU: Objection to form.

9 Q. Are you frozen?

10 A. No. I'm just -- you know, it is --  
11 you know, again, I typically don't sign  
12 promissory notes, and I don't recall why I  
13 signed these, but -- you know, but I did.

14 Q. All right. So listen carefully to  
15 my question. Would you have ever signed  
16 promissory notes with a face amount of  
17 \$7.4 million without believing that you were  
18 authorized to do so?

19 A. No. I mean, I'm -- I'm putting my  
20 signature on there, so no.

21 Q. Okay. And would you have signed two  
22 promissory notes obligating HCMFA to pay  
23 Highland \$7.4 million without Mr. Dondero's  
24 prior knowledge and approval?

25 MS. DEITSCH-PEREZ: Object to the



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A. You know, from -- from what I recall  
and these notes, you know, I don't recall  
specifically Mr. -- Mr. Dondero saying to -- to  
this a loan.

When we got to the end, I had a  
 on with Mr. Dondero on where to, you  
 cally get the funds to reimburse the  
 I recall him saying, get the money  
 and.

A. That is what I recall -- in my conversation with him, that is -- that is what I recall.

A. I don't.

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1 WATERHOUSE - 10-19-21

2 notes?

3 A. I didn't ask -- I don't specifically  
4 ask people to draft notes really. I mean,  
5 again, you know, the legal group at Highland is  
6 responsible and has always been responsible for  
7 drafting promissory notes.

8 Q. So based on your -- based on the  
9 practice, you believe that somebody from the  
10 Highland's legal department would have drafted  
11 these notes. Do I have that right?

12 MS. DEITSCH-PEREZ: Object to the  
13 form. John, I also asked you for the Word  
14 versions of these notes so we could look at  
15 the properties, and you have not provided  
16 them. Are you intending to?

17 MR. MORRIS: No.

18 Q. Can you answer my question, sir?

19 A. Again, I --

20 MS. DANDENEAU: Do you want him to  
21 repeat it?

22 A. Yeah, why don't you repeat it?

23 Q. Sure. Mr. Waterhouse, based on the  
24 practice that you have described in your  
25 understanding, do you believe that these notes

WATERHOUSE - 10-19-21

would have been drafted by somebody in the legal department?

MS. DEITSCH-PEREZ: Object to the

A. Yes.

Q. Okay. And do you know who would be instructed -- do you have any knowledge as to who would have instructed the legal department to draft these notes?

MS. DEITSCH-PEREZ: Object to the

A. It was whoever was working -- I think it was likely someone on the team. I don't remember exactly on every note or document, but, again, a lot of these things of this nature -- they're operational in nature -- were handled by the team.

The team knows to -- I mean, we  
t documents. We're not lawyers.  
attorneys. It is not what I do or  
s do.

So they are always instructed to go  
and -- and go to the legal team to get  
documents like this drafted. Also, when you go

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1 WATERHOUSE - 10-19-21

2 corporate accounting group gave the two notes  
3 to PricewaterhouseCoopers in connection with  
4 the audit; correct?

5 MS. DANDENEAU: Objection to form.

6 A. Yes. I mean, that is -- yeah, I  
7 mean, they -- unless the legal team can also  
8 retain copies of items like this. I mean, I  
9 don't know everything that they would retain as  
10 well.

11 The legal team would also, if they  
12 had documents as part of audits, turn that over  
13 to the auditors as well. So it could have been  
14 the corporate accounting team. It could be  
15 someone on the legal team.

16 Q. All right. So you didn't -- you  
17 didn't draft this note; right?

18 A. I -- I -- I did not.

19 Q. But somebody at Highland did; is  
20 that fair?

21 MS. DEITSCH-PEREZ: Object to the  
22 form.

23 A. I don't know. I mean, we can go to  
24 the legal team. I don't -- I'm not sitting  
25 behind someone in legal. Maybe they went to

1 WATERHOUSE - 10-19-21

2 outside counsel. I have no idea.

3 Q. Did you have any reason to believe  
4 you weren't authorized to sign this note,  
5 either of these two notes?

6 A. I think I have already answered that  
7 question.

8 Q. Okay. You didn't give these notes  
9 to PricewaterhouseCoopers; correct?

10 MS. DANDENEAU: Objection to form.

11 A. I don't recall giving these to  
12 PricewaterhouseCoopers.

13 Q. And in the practice that you have  
14 described, somebody in the corporate accounting  
15 group would have given these two notes to  
16 PricewaterhouseCoopers; correct?

17 MS. DANDENEAU: Objection to form.

18 A. I think I've answered that. I said  
19 either the corporate accounting team or maybe  
20 the legal team.

21 MR. MORRIS: Okay. Why don't we  
22 take our lunch break here.

23 VIDEOGRAPHER: We're going off the  
24 record at 1:04 p.m.

25 (Recess taken 1:04 p.m. to 1:49 p.m.)

1 WATERHOUSE - 10-19-21

2 VIDEOGRAPHER: We are back on the  
3 record at 1:49 p.m.

4 Q. Mr. Waterhouse, did you speak with  
5 anybody during the break about the substance of  
6 this deposition?

7 A. I spoke to -- to Deb and Michelle.

8 Q. About the substance of the  
9 deposition?

10 A. Yes.

11 Q. Can you tell me what you talked  
12 about?

13 MS. DANDENEAU: No. We object on  
14 the basis of privilege.

15 Q. Okay. You are going to follow your  
16 counsel's objection here?

17 A. Yes.

18 Q. Okay.

19 MR. MORRIS: Can we put up on the  
20 screen Exhibit 35.

21 (Exhibit 35 marked.)

22 Q. Are you able to see that document,  
23 sir?

24 A. Yes.

25 Q. Have you ever seen an incumbency





WATERHOUSE - 10-19-21

A. Again, I'm not the legal -- I don't know if this makes me the treasurer or the appointment. I don't know -- I don't know that, so I don't -- I don't know if that document -- again, I think -- again, I'm not the legal expert. I think isn't there -- aren't there other legal documents that detail who the officers are that could be incorporated or things like that? Again, I don't want to play armchair attorney here.

Q. I'm not asking you for a legal conclusion. I'm asking you for your knowledge and understanding. When you signed this document, did you understand that you were accepting an appointment as the treasurer of HCMFA?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Objection, form.

A. Again, I don't think this -- that wasn't my understanding. I don't think this makes -- this document makes me the treasurer.

Q. What do you think this document -- why did you sign this document?

MS. DEITSCH-PEREZ: Objection to

1 WATERHOUSE - 10-19-21

2 form.

3 MR. MORRIS: You're objecting to the  
4 form of the question when I asked him why  
5 did you sign the document? What is the  
6 basis for the objection?

7 MS. DEITSCH-PEREZ: Because, John, I  
8 think that it does call for a legal  
9 conclusion other than -- with him saying  
10 because somebody told me to sign this  
11 document. But if you want to go there,  
12 that is fine.

13 MR. MORRIS: Okay.

14 MS. DANDENEAU: I don't think --  
15 he's already said he's not a lawyer.

16 MR. MORRIS: I'll allow the witness  
17 to answer this question.

18 Q. Why did you sign this document, sir?

19 A. I mean, our -- our legal group would  
20 bring by these incumbency certificates from  
21 time to time. I have no idea why they're being  
22 updated, and I was asked to sign.

23 Q. Did you ask anybody, what is this  
24 document?

25 A. No.



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A. I'm not sure I understand the question. I wasn't -- I mean, I'm -- I'm the current acting treasurer.

MS. DANDENEAU: Objection to form.

Q. Did anybody ever tell you at any time that you were not authorized to sign the promissory notes that we looked at before?

Q. Did anybody ever tell you at any time that you should not have signed the two promissory notes that we looked at before?

1 WATERHOUSE - 10-19-21

2 A. Not that I recall.

3 Q. Did you ever tell anybody at any  
4 time that you weren't authorized to sign the  
5 two promissory notes that we looked at before  
6 lunch?

7 A. Not that I recall.

8 Q. Did you ever tell anybody at any  
9 time that you made a mistake when you signed  
10 the two promissory notes that we looked at  
11 before lunch?

12 A. Not that I recall.

13 Q. As you sit here right now, do you  
14 have any reason to believe that you were not  
15 authorized to sign the two documents that we  
16 looked at before lunch?

17 MS. DANDENEAU: Objection to form.

18 A. If -- if this is the -- the valid  
19 incumbency certificate, I mean, this does --  
20 this does detail who the signers are.

21 Q. Okay. And looking at that document,  
22 does that give you comfort that you were  
23 authorized to sign the two promissory notes  
24 that we looked at before lunch?

25 MS. DEITSCH-PEREZ: Object to the





1 WATERHOUSE - 10-19-21

2 A. Not that I'm aware, no.

3 Q. Did you have any reason to believe a  
4 year ago that you made a mistake when you  
5 signed those two notes?

6 A. Not that I'm aware.

7 Q. A year ago you believed that HCMFA  
8 owed Highland the unpaid principal amounts that  
9 were due under those two notes; correct?

10 A. They're -- they're promissory notes  
11 that were -- as you presented, that were --  
12 that were executed. Whether they're valid or  
13 if there's other reasons, I didn't -- I don't  
14 know.

15 Q. I'm not asking you whether they're  
16 valid or not. I'm asking you for your state of  
17 mind. A year ago you believed that HCMFA  
18 was -- was obligated to pay the unpaid  
19 principal amount under the two notes that you  
20 signed; correct?

21 A. Yeah, I'm -- I'm -- yes.

22 Q. Thank you. Are you aware -- you're  
23 aware that -- that in 2017, NexPoint issued a  
24 note in favor of Highland in the approximate  
25 amount of \$30 million; correct?

1 WATERHOUSE - 10-19-21

2 A. I'm -- I'm -- I'm generally aware.

3 Q. Okay. And are you generally aware  
4 that from time to time, after the note was  
5 issued by NexPoint, that moneys were applied to  
6 principal and interest that were due under the  
7 NexPoint note?

8 A. Yes, I'm generally aware.

9 Q. Okay. And did anybody ever tell you  
10 that the payments that were made against the  
11 NexPoint notes were made by mistake?

12 A. Yes.

13 Q. And is it the one payment that we  
14 talked about earlier today?

15 A. We talked about a lot of things  
16 today. What payment are we talking about?

17 Q. Okay. Who told you that any payment  
18 made against the NexPoint note was made by  
19 mistake?

20 A. D.C. Sauter.

21 Q. When did Mr. Sauter tell you that?

22 A. I don't -- I don't remember  
23 specifically.

24 Q. Do you remember what payments --

25 A. Sometime -- sometime this year.

1 WATERHOUSE - 10-19-21

2 Q. Sometime in 2021?

3 A. Yes.

4 Q. Do you remember what payment he was  
5 referring to?

6 A. It was the -- the payment made in  
7 January of 2021 or -- yeah, January of -- of  
8 this -- January of 2021.

9 Q. Okay. So did anybody ever tell you  
10 at any time that any payment that was made  
11 against principal --

12 A. And -- and -- and -- hold on, and it  
13 may have been other -- again, it may have been  
14 that payment or -- or there may have been what  
15 he was explaining, a misapplication of prior  
16 payments as well.

17 Q. Can you -- can you give me any  
18 specificity -- withdrawn.

19 Withdrawn. Can you tell me  
20 everything that Mr. Sauter told you about --  
21 about errors in relation to payments made  
22 against principal and interest due under the  
23 NexPoint note?

24 MS. DANDENEAU: Can I just --

25 MR. RUKAVINA: Hold on. Hold on.

WATERHOUSE - 10-19-21

I'm going to object here, and I'm going to instruct the witness not to answer depending on the discussion that you had -- Mr. Waterhouse, I'm the lawyer for NexPoint, and as everyone here knows, D.C. Sauter is in-house counsel.

So if you and Mr. Sauter were having a factual discussion and him preparing his affidavit, et cetera, then go ahead and answer that. But if you were having a discussion as to our legal strategy in this lawsuit, or anything having to do with that, then do not answer that.

And if you need to talk to either your counsel or me about that, then we need to have that discussion now.

A. Okay. Yeah, I don't -- I don't really know how to make that distinction, so maybe I need to talk to counsel before I answer, or if I can answer.

Q. Let me just ask you this question: Did -- did you have any conversation with Mr. Sauter about any payment of principal and interest prior to the time that you left



1 WATERHOUSE - 10-19-21

2 conversation took place in 2021. You just  
3 don't remember if it was before or after you  
4 left Highland's employment. Do I have that  
5 right?

6 A. It was sometime this year. I  
7 don't -- I don't remember.

8 Q. Okay. Did you report this  
9 conversation to Mr. Seery at any point?

10 A. I don't believe so.

11 Q. Did you report this conversation to  
12 anybody at DSI at any time?

13 A. I don't recall.

14 Q. Do you have -- you don't have a  
15 recollection of ever doing that; correct?

16 A. Yeah, that's right. I don't recall  
17 doing that.

18 Q. Do you recall telling anybody at  
19 Pachulski Stang about the conversation you  
20 recall with Mr. Sauter?

21 A. No, I don't -- I don't recall.

22 Q. Did you tell any of the independent  
23 board members about your conversation with  
24 Mr. Sauter?

25 A. I don't recall.

1 WATERHOUSE - 10-19-21

2 Q. Did you tell any of the employees at  
3 Highland before you left Highland's employment  
4 about this call that you had with Mr. Sauter?

5 MS. DANDENEAU: Objection to form.

6 A. No, I don't -- no, I don't recall.

7 Q. NexPoint -- to the best of your  
8 knowledge, did NexPoint ever file a proof of  
9 claim against Highland to try to recover moneys  
10 that were mistakenly paid against the principal  
11 and interest due under the note?

12 A. Okay. Hold on. You are saying did  
13 NexPoint Advisors file a proof of claim to  
14 Highland for errors related to payments under  
15 the NexPoint note to Highland?

16 Q. Correct.

17 A. I'm -- I'm -- I'm not -- I'm not  
18 aware.

19 Q. Are you aware --

20 A. I'm not the legal person here, I  
21 don't know.

22 Q. I'm just asking for your knowledge,  
23 sir.

24 A. Yeah, I don't know. I'm not aware.

25 Q. Are you aware of any claim of any

1 WATERHOUSE - 10-19-21

2 kind that NexPoint has ever made to try to  
3 recover the amounts that it contends were -- or  
4 that Mr. Sauter contend were mistakenly applied  
5 against principal and interest due under the  
6 NexPoint note?

7 A. I'm not aware.

8 MS. DANDENEAU: Objection to form.

9 Q. Okay. The advisors' agreements with  
10 the retail funds are subject to annual renewal;  
11 correct?

12 A. Yes.

13 Q. And do you participate in the  
14 renewal process each year?

15 A. Yes.

16 Q. What role do you play in the renewal  
17 process?

18 A. I'm -- I'm asked by the retail board  
19 to walk-through the advisors financials.

20 Q. And do you do that in the context of  
21 a board meeting?

22 A. Yes, it is -- yes, it is typically  
23 done in a board meeting.

24 Q. And do you recall the time --  
25 does -- does the renewal process happen around



1 WATERHOUSE - 10-19-21

2 the same time each year?

3 A. Yes, it is -- it is around the same  
4 time every year.

5 Q. And what -- what time period of the  
6 year does the renewal process occur?

7 A. Approximately the September  
8 timeframe.

9 Q. During that process, in your  
10 experience, does the board typically conduct  
11 its own diligence and ask for information?

12 A. Does the board ask for lots of -- I  
13 mean, just -- I mean, lots of information as a  
14 part of that -- that -- as part of that board  
15 meeting and that process.

16 Q. Okay. And do you recall that the  
17 process in 2020 spilled into October?

18 A. Yes. Yes.

19 Q. Okay. And as part of the process in  
20 2020, the retail board asked -- asked what are  
21 referred to as 15(c) questions; right?

22 A. I guess I don't want to be -- they  
23 asked 15(c) -- are you saying they asked 15(c)  
24 questions and this is why it went into October  
25 or --

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1 WATERHOUSE - 10-19-21

2 up -- keep going just a little bit.

3 Q. You will see that there is an email  
4 from Lauren Thedford to Thomas Surgent and  
5 others where she reports that she was attaching  
6 and reproducing below additional 15(c)  
7 follow-up questions from the board.

8 Do you see that?

9 A. Yes.

10 Q. And do you see Question No. 2 asks  
11 whether there are any material outstanding  
12 amounts currently payable or due in the future  
13 (e.g., notes) to HCMLP by HCMFA or NexPoint  
14 Advisors or any other affiliate that provides  
15 services to the funds?

16 Do you see that?

17 A. Yes.

18 Q. And -- and did you -- do you recall  
19 that in -- in October of 2020 the retail boards  
20 were asking for that information?

21 A. I don't recall it, but there --  
22 they're obviously asking in this email.

23 Q. Okay.

24 MR. MORRIS: Can we scroll up a  
25 little bit, please.

1 WATERHOUSE - 10-19-21

2 Q. And then do you see that  
3 Ms. Thedford includes you on the email string  
4 on Tuesday, October 6th, at 5:52?

5 A. Yes.

6 Q. And she asks you and Dave Klos and  
7 Kristin Hendrix for advice on that particular  
8 Request No. 2 that I have just read; right?

9 A. Yes.

10 Q. Okay. Can you tell me who  
11 Ms. Thedford is?

12 A. She was an attorney that was in the  
13 legal group.

14 Q. At Highland Capital Management,  
15 L.P.?

16 A. I'm -- I'm -- I'm -- I don't  
17 remember if she was an employee of Highland or  
18 any of the advisors.

19 Q. Okay. Do you know if she served as  
20 the corporate secretary for both HCMFA and  
21 NexPoint?

22 A. Yes.

23 Q. And -- okay.

24 Do you know whether Ms. Thedford  
25 held any positions in relation to the retail

WATERHOUSE - 10-19-21

funds as we defined that term?

A. Yes.

Q. What is your understanding of the

positions that Ms. Thedford held at the retail funds?

A. I -- I recall her being an officer.  
I don't recall her title.

Q. Okay. Is she still an officer at

any of the retail funds today?

A. No.

Q. Do you know when she ceased to be an owner of the retail funds?

A. Approximately.

Q. And when did she approximately cease  
be an officer of the retail funds?

A. It was in -- it was in early of

Q. Okay. Do you know when she became  
officer of the retail funds?

A. I don't recall.

Q. To the best of your recollection, she an officer of the retail funds in the month of October of 2020?

A. I believe so.



1 WATERHOUSE - 10-19-21

2 refer her to the balance sheet that was  
3 provided to the board as part of the 15(c)  
4 materials.

5 Do you see that?

6 A. Yes.

7 Q. And -- and did the advisors provide  
8 to the board certain balance sheets in 2020 in  
9 connection with the 15(c) review?

10 A. Yes, they did.

11 Q. Okay. And were the amounts that  
12 were outstanding or that were to be due in the  
13 future by the advisors to Highland included in  
14 the liability section of the balance sheet that  
15 was given to the retail board?

16 A. Yes. Notes would be reflected as  
17 liabilities.

18 Q. Okay. And --

19 A. If I'm understanding your question  
20 correctly.

21 Q. You are. And -- and -- and those  
22 liabilities you -- you were -- you believed  
23 were responsive to the retail board's question;  
24 correct?

25 A. Yes.

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1 WATERHOUSE - 10-19-21

2 for everyone.

3 MS. DEITSCH-PEREZ: Got it. Thank

4 you.

5 Q. Do you recall if the proposed

6 response that Ms. Thedford crafted was

7 delivered to the retail board with the -- with

8 the yellow dates having been completed?

9 A. I don't know.

10 MR. MORRIS: Davor, I'm going to ask

11 that the advisors and -- the advisors of

12 both HCMFA and NexPoint produce to me any

13 report that was given to the retail board

14 concerning the promissory notes at issue,

15 including the obligations under the notes.

16 Q. Do you know -- do you know if

17 ultimately NexPoint informed the retail board

18 in response to its question that NexPoint owed

19 Highland approximately 23 or \$24 million?

20 MS. DANDENEAU: Objection to the

21 form.

22 A. Sorry, are you asking, did NexPoint

23 tell the retail board that it owed Highland?

24 Q. Let me ask a better question,

25 Mr. Waterhouse.

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Did -- do you know if anybody ever answered the retail board's question that was Number 2?

A. I don't -- I can't say for sure.

Q. Okay. Do you recall -- I think you testified earlier that you walked through the processors' financials with the retail board; correct?

A. Yes.

Q. And as part of that process, did you lose to the retail board the obligations NexPoint and HCMFA had to Highland under promissory notes?

A. The retail board, as I stated earlier, receives financial information, balance sheet, income statement information from the advisors. That information is provided to the retail board in connection with the 15(c) process.

So any notes between the advisors  
the Highland would be -- anything would be  
filed in those financial statements.

Q. Do you recall in 2020 ever speaking  
the retail board about the advisors'

1 WATERHOUSE - 10-19-21

2 obligations under the notes to Highland?

3 MS. DANDENEAU: Objection to form.

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. I don't recall specifically.

7 Q. Do you have any general recollection  
8 of discussing with the retail board the  
9 advisors' obligations to Highland under the  
10 notes that they issued?

11 MS. DANDENEAU: Object to the form.

12 MS. DEITSCH-PEREZ: Object to the  
13 form.

14 A. I just recall generally just -- it  
15 is just -- I present the financial statements,  
16 and if they have questions, I answer their  
17 questions and walk them through.

18 I don't recall what they asked. I  
19 don't recall where the discussion went. I  
20 don't recall anything of that nature.

21 Q. Okay. Do you know if anybody on  
22 behalf of HCMF -- HCMFA ever told the retail  
23 board that HCMFA had no obligations under the  
24 two 2019 notes that you signed? Withdrawn.

25 Do you know whether anybody on

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1 WATERHOUSE - 10-19-21

2 Q. Okay. And do you see that Dustin  
3 Norris is copied on this email?

4 A. Yes, he is.

5 Q. Great. Do you know whether  
6 Mr. Norris held any positions at either of the  
7 advisors as of October 6, 2020?

8 A. I will go back to -- I'm not the  
9 legal expert of what appoints you or how or  
10 why, but you did see Dustin's name on the  
11 incumbency certificate that you produced  
12 earlier.

13 Q. Do you know what his title was in  
14 October of 2020?

15 MS. DANDENEAU: Objection to form.

16 A. I don't -- I don't recall.

17 Q. Was he -- did he have a title with  
18 each of the advisors, to the best of your  
19 recollection?

20 A. I don't recall.

21 Q. Do you know why he is included on  
22 this email string?

23 A. I didn't add Dustin. It looks like  
24 Lauren did. I don't know why she added him or  
25 not. You would have to ask her.

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Q. Does Mr. Norris play a role in formulating the advisors' responses to the questions asked by the retail board in connection with the 15(c) annual review?

MS. DANDENEAU: Objection to form.

A. He -- Dustin Norris is there in the  
meetings. But -- so he has a role, yes.

Q. Okay. And does Mr. Norris hold any positions, to the best of your knowledge, in connection to any of the retail funds?

A. I don't -- I don't believe he does.

Q. How about Mr. Post, do you know whether Mr. Post holds any position in either of the advisors?

A. I mean, he -- he -- yes.

Q. What is your understanding of the positions that Mr. Post holds in relation to advisors?

MS. DANDENEAU: Objection to form.

A. He is an employee of NexPoint  
sors. He is also the chief compliance  
cer for -- for NexPoint.

Q. Who is the chief compliance officer  
ICMFA, if you know?





1 WATERHOUSE - 10-19-21

2 indicate.

3 Q. And you wouldn't have written it if  
4 you didn't believe it to be true at the time;  
5 correct?

6 A. Correct.

7 Q. And when you referred to shared  
8 services outstanding, what you meant there was  
9 that neither NexPoint nor HCMFA owed Highland  
10 any money under the shared services agreements  
11 that they had with Highland as of October 6th,  
12 2020; right?

13 A. I don't know if it is as of October  
14 6, 2020 or if it was from -- like through the  
15 financials -- through the date of the  
16 financials as of June 30.

17 Q. Okay. And then you noted that  
18 HCMA -- the HCMFA note is a demand note; right?

19 A. Yes.

20 Q. And then you referred Ms. Thedford  
21 to Kristin Hendrix for the term of the NexPoint  
22 note. Do I have that right?

23 A. Yes.

24 Q. And then you refer to that agreement  
25 that is referenced in the 2018 audited

1 WATERHOUSE - 10-19-21

2 financials about Highland's agreement not to  
3 make demand upon HCMFA until May 2021; correct?

4 A. Correct.

5 Q. And then -- and then the next thing  
6 you write is that the attorneys think that BK  
7 doesn't change that, but don't know for sure at  
8 the end of the day.

9 Do you see that sentence?

10 A. Yes.

11 Q. Which attorneys were you referring  
12 to?

13 A. I don't remember.

14 Q. Did you have a conversation with  
15 attorneys concerning whether the bankruptcy  
16 would change or alter in any way the agreement  
17 not to make a demand under the HCMFA note?

18 A. Look, yeah, I mean, I don't  
19 specifically remember, but generally, I mean,  
20 it is in this email. I don't -- I don't -- I  
21 don't -- I don't remember who I talked to or,  
22 you know, was it inside counsel, outside  
23 counsel, but obviously I talked to somebody.

24 Q. Do you have any recollection --

25 A. Well, I don't even know if it's --

WATERHOUSE - 10-19-21

actually, it may not even have been me. I say the attorneys in, you know, a lot of -- like I talked about the team.

It could have been someone on the team, like, hey, we need to run this down, and maybe they talked to attorneys again and relayed that information to me.

So I really don't know if I spoke or someone else did or -- or, I mean, and maybe it wasn't even from corporate accounting. Maybe it was, you know, other -- I'm kind of summarizing, you know, again, so I don't really know -- I can't really say for sure. I don't remember how I came about of this knowledge.

Q. I appreciate your efforts, Mr. Waterhouse, but I will just tell you that if I ask a question and you don't know the answer or you don't recall, I'm happy to accept that. I don't -- I don't want you to speculate, so I want to be clear about that. So I appreciate it.

Let me just ask you simply: Do you know what attorneys -- can you identify any of the attorneys who thought that the bankruptcy



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1 WATERHOUSE - 10-19-21

2 retail board that the advisors had the full  
3 faith and backing of Mr. -- Mr. Dondero?

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. I don't recall discussing that with  
7 him at the time.

8 Q. When you told this to the board, was  
9 Mr. Dondero participating in the discussion?

10 A. Not that I recall.

11 Q. Withdrawn. Was it not -- withdrawn.

12 Do you recall whether -- when you  
13 covered this issue with the board, was that in  
14 a -- a Zoom call or a Webex call? Was it a  
15 telephone call? Was it in-person? Like where  
16 were you physically in relation to the board?

17 A. I believe I was at home.

18 Q. Okay. Can you identify every person  
19 that you recall who was present for this  
20 disclosure other than -- other than the board  
21 members themselves?

22 MS. DEITSCH-PEREZ: Object to the  
23 form.

24 A. I don't recall everyone on the call.

25 Q. Can you identify anybody who was on

1 WATERHOUSE - 10-19-21

2 the call?

3 A. Other than the board members?

4 Q. Yes.

5 A. Lauren Thedford. I mean, there  
6 are -- there are many -- my section is just one  
7 of many sections that are just -- you know, as  
8 you can appreciate, this is a long board  
9 meeting.

10 I can't recall specifically, really  
11 even generally, or who was on when this was  
12 discussed. But Lauren was typically on for the  
13 entire time.

14 Q. I apologize if I asked you this, but  
15 do either of Mr. Norris or Mr. Post hold any  
16 positions relative to the retail funds?

17 A. I think you asked me this already,  
18 John.

19 Q. Okay. I just don't recall. Can you  
20 just refresh my recollection if I did, in fact,  
21 ask you the question?

22 A. I don't believe -- if we can go  
23 back. I don't believe Mr. Norris has a title  
24 at the retail funds. Mr. -- and Mr. Post is  
25 the CCO of the advisor, the advisors.



1 WATERHOUSE - 10-19-21

2 Q. Okay. Do you know if either of them  
3 have a position with the retail board -- with  
4 the retail funds?

5 A. I don't believe Mr. Norris has a  
6 position with the retail funds.

7 Q. All right. What about Mr. Post?

8 A. Mr. Post is the CCO of the advisors.

9 Q. Okay. Does he hold any position --

10 A. I don't believe so.

11 Q. -- with the retail funds?

12 A. I don't believe so.

13 Q. Okay.

14 A. I don't know if being the CCO for  
15 the advisor conveys something for the retail  
16 funds. Again, I am not -- that is the legal  
17 compliance part of it. I don't know.

18 Q. Why did you tell the retail board  
19 that the advisors have the full faith and  
20 backing from Mr. Dondero?

21 MS. DANDENEAU: Objection to form.

22 A. It is -- it is -- it is what has  
23 been discussed with them prior.

24 Q. And were you -- were you trying to  
25 give them comfort that even though the

1 WATERHOUSE - 10-19-21

2 liabilities exceeded the assets that the  
3 advisors would still be able to meet their  
4 obligations as they become due?

5 MS. DANDENEAU: Objection to form.

6 MS. DEITSCH-PEREZ: Object form.

7 A. I -- I can't -- I don't remember  
8 specifically the conversation, but generally --  
9 you know, generally, yes. And that is why --  
10 but, you know, again, in this email saying, you  
11 know, I am sure I qualified it with the retail  
12 board, you know, as I said I like -- you know,  
13 to my knowledge, that hasn't changed. But,  
14 again, generally -- generally that is what I  
15 remember.

16 Q. Okay. Do you recall if in the  
17 advisors' response to the retail board's  
18 question if the response included any statement  
19 concerning Mr. Dondero and -- and the full  
20 faith and backing that he was giving to the  
21 advisors?

22 MS. DEITSCH-PEREZ: Object to the  
23 form.

24 A. I don't -- I don't remember  
25 specifically what was provided.



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2 for those documents too.

3 Q. Let's go to the next exhibit, which  
4 is Number 10. So I think it is in your stack,  
5 Mr. Waterhouse.

6 MR. MORRIS: And we can take the one  
7 down from the screen and put up Number 10  
8 for everybody.

9 (Exhibit 10 marked.)

10 Q. And I don't know if you have ever  
11 seen this before, but I'm really putting it up  
12 on the screen for purposes of turning to the  
13 very last page of the document.

14 So this is a document that we have  
15 been -- that we premarked as Exhibit 10. And  
16 we're turning to the last page of the document,  
17 which is a document that was filed in the  
18 adversary proceeding 21-3004. And -- no, I  
19 apologize, I think we -- right there. Perfect.

20 And it is page 31 of 31.

21 MR. MORRIS: I think there may have  
22 been some something erroneously stapled to  
23 the hard copy that I gave you folks, but  
24 I'm looking for page 31 of 31 in the  
25 document that begins with the first page of

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A. It is something like this, but I

Q. Well, but this document does say in

A. Yes.

Q. And are you aware of any other

A. Hold on. Are you asking, am I aware

Q. No. Let me try again.

Are you aware of any other document

A. I'm -- I think there was something

0. Okay. And do you think that the

1 WATERHOUSE - 10-19-21

2 A. I don't know.

3 Q. All right. This document is dated  
4 April 15, 2019. Do you see that?

5 A. I do.

6 Q. And do you remember that the audit  
7 was completed on June 3rd, 2019?

8 A. Yes.

9 Q. And do you recall that the audited  
10 financials -- and I'm happy to pull them up if  
11 you would like, but do you recall that the  
12 audited financials included a reference to the  
13 agreement pursuant to which Highland agreed not  
14 to make a demand until May 31st, 2021?

15 A. Yes, I remember.

16 Q. And as part of the process, would  
17 you have expected the corporate accounting team  
18 to have provided a copy of this document to  
19 PwC?

20 MS. DANDENEAU: Objection to form.

21 A. Yes, I would have expected something  
22 like this, or again, you know, some document  
23 that basically states -- states the deferral  
24 till May 31 of 2020.

25 Q. Okay.



1 WATERHOUSE - 10-19-21

2 A. May 31 of 2021, excuse me.

3 Q. And this document states the  
4 deferral that you just described; correct?

5 A. It does.

6 Q. And this document states the  
7 deferral that was described in the audited  
8 financial statements that we looked at before;  
9 correct?

10 A. It does.

11 MR. MORRIS: Okay. Can we scroll  
12 down just a little bit to see who signed on  
13 behalf of the acknowledgment there.

14 Q. Okay. So Mr. Dondero signed this  
15 document on behalf of both HCMFA and Highland;  
16 do you see that?

17 A. I do.

18 Q. Okay. Did you discuss this document  
19 or the -- withdrawn.

20 Did you discuss the concept of the  
21 deferral with Mr. Dondero in the spring of  
22 2019?

23 A. I think I testified I don't recall.

24 Q. Okay. Do you know whose idea it was  
25 to issue the acknowledgment in this form?

1 WATERHOUSE - 10-19-21

2 A. I don't recall.

3 MR. MORRIS: Can we scroll back up  
4 to the document, please.

5 Q. Do you see in the beginning it says,  
6 reference is made to certain outstanding  
7 amounts loaned from Highland to HCMFA for  
8 funding ongoing operations.

9 Do you see that?

10 A. Yes.

11 Q. And were you aware as the CFO of  
12 Highland and as the treasurer of HCMFA that as  
13 of April 15, 2019, Highland had made certain  
14 loans to HCMFA to fund HCMFA's ongoing  
15 operations?

16 A. Yes.

17 Q. And were you aware that those loans  
18 were payable on demand and remained outstanding  
19 as of December 31st, 2018?

20 A. Yes.

21 Q. And were you aware that those  
22 amounts were payable on demand, and they  
23 remained outstanding as of April 15, 2019?

24 MS. DEITSCH-PEREZ: Object to the  
25 form.

1 WATERHOUSE - 10-19-21

2 A. Well, this -- this document dated  
3 April 15, 2019 says they have been deferred to  
4 May 31, 2021.

5 Q. Right. But I'm just sticking to the  
6 first paragraph where they refer to the  
7 outstanding amounts. And in the end it says  
8 the -- it remained outstanding on December  
9 31st, 2018, and I think you told me that you  
10 understood that, and then I'm just trying to  
11 capture the last piece of it.

12 Did you understand that there were  
13 amounts outstanding from the loan that Highland  
14 made to HCMFA to fund ongoing operations as of  
15 April 15th, 2019?

16 A. Yes.

17 Q. Thank you. Let's look at the next  
18 sentence. HCMFA expects that it may be unable  
19 to repay such amounts should they become due  
20 for the period commencing today and continuing  
21 through May 31st, 2021.

22 Do you see that?

23 MS. DANDENEAU: Objection to form.

24 A. I do.

25 Q. As the CFO -- withdrawn.

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A. I mean, it -- it -- the answer to that is I really didn't have any -- I didn't have an opinion really.

A. I don't believe so.

A. Not really. I guess I don't...

A. Yes.

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1 WATERHOUSE - 10-19-21

2 should they become due?

3 MS. DANDENEAU: Objection to form.

4 A. I mean, I -- when you look at that,  
5 to answer you, completely, you know, again,  
6 if -- the response I gave the retail board was,  
7 you know, the -- the advice -- HCMFA advisors  
8 have the -- have the full faith and backing of  
9 Jim Dondero. So I didn't form an opinion of  
10 whether the advisor could pay it or not.

11 Q. Did you form any view as to whether  
12 the advisors could repay the amounts that it  
13 owed to Highland should they become due without  
14 the full faith and backing of Mr. Dondero?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Form.

17 A. I mean, if you -- if you -- if you  
18 take that last statement out, I mean, it would  
19 be difficult for HCMFA to pay back demand notes  
20 at that time.

21 Q. And it was precisely for that reason  
22 that you told the retail board that -- that the  
23 retail -- that the advisors had the full faith  
24 and backing of Mr. Dondero; correct?

25 MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 A. I mean, yes, as the mouthpiece, I  
3 was relaying information.

4 Q. Okay. And you relayed that  
5 information with the knowledge and approval of  
6 Mr. Dondero; correct?

7 MS. DEITSCH-PEREZ: Object to the  
8 form.

9 A. As I stated in the email, I don't  
10 believe, and I think I testified I don't  
11 believe I had conversations with Mr. Dondero at  
12 the time of that board meeting.

13 Q. Did you tell the retail board that  
14 the advisors had the full faith and backing of  
15 Mr. Dondero without Mr. Dondero's prior  
16 approval?

17 A. Yeah, I -- I -- yes, I'm -- like I  
18 said, I think I testified earlier, I'm sure I  
19 qualified it as well.

20 Q. What do you mean by that?

21 MS. DANDENEAU: Objection to form.

22 A. Again -- again, like I said in the  
23 email, it has the full faith and backing of Jim  
24 Dondero unless that has changed.

25 Q. Actually that is not what you said,

1 WATERHOUSE - 10-19-21

2 so let's put the email back up.

3 A. It is -- it is -- it is in the  
4 email.

5 Q. Let's put the email back up. You  
6 didn't say unless it has changed. You said you  
7 believe it hasn't changed; right?

8 A. Okay. And to my knowledge that  
9 hasn't changed, that is what it says.

10 Q. That's right.

11 A. But, again, I mean, that is -- I  
12 don't know everything. And I'm not in every  
13 conversation. I'm not -- to presume that I am,  
14 is -- and you have to put myself -- as you  
15 started this out, Mr. Morris, I was at home in  
16 October of 2020 with COVID -- or, you know,  
17 under these COVID times that we described is  
18 very difficult.

19 We have all been working at home for  
20 really the first time ever, undergoing  
21 processes, procedures, control environments  
22 that have been untested, and there is poor  
23 communication.

24 So I am relaying, as I'm telling you  
25 now, what is in the email. And unless

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1 WATERHOUSE - 10-19-21

2 promissory notes that your clients refuse  
3 to pay.

4 So I'm going to continue to ask my  
5 questions, and I would ask the court  
6 reporter to read back my last question.

7 (Record read.)

8 MS. DEITSCH-PEREZ: And then I  
9 believe there were objections to form.

10 Q. You can answer the question.

11 A. Yes.

12 Q. Thank you very much, sir.

13 MR. MORRIS: Can we go back to the  
14 other document, please?

15 Q. Mr. Waterhouse, do you know if this  
16 document was ever shared with the retail board?

17 A. I don't recall.

18 Q. Did you ever share it with the  
19 retail board?

20 A. I don't recall.

21 Q. Did you ever tell the retail board  
22 about the substance of this document?

23 A. I don't recall.

24 Q. Did you ever tell the retail board  
25 that Highland had agreed not to make a demand

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1 WATERHOUSE - 10-19-21

2 Q. Did you ever inform PwC that HCMFA's  
3 liabilities exceeded its assets?

4 MS. DANDENEAU: Object to the form.

5 A. I don't -- I don't think I told  
6 them. I mean, they -- they audited the  
7 financial statements.

8 Q. Did -- do you know if anybody on  
9 behalf of Highland ever informed  
10 PricewaterhouseCoopers that HCMFA may be unable  
11 to repay amounts owing to Highland, should they  
12 become due?

13 MS. DANDENEAU: Objection to form.

14 A. Yes. Again, I think I testified  
15 earlier that -- that this was communicated to  
16 the auditors.

17 Q. Ideally --

18 A. I don't know who exactly did that.  
19 I don't recall doing it, but, yeah, it was --  
20 it was communicated. And that is why -- I  
21 mean, there is a disclosure in the financial  
22 statements; right?

23 Q. There is, and that disclosure  
24 relates to the last sentence of this document;  
25 correct?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Do you recall looking in the  
4 document and seeing anything that was disclosed  
5 with respect to the sentence above that?

6 A. No.

7 Q. Do you know whether anybody on  
8 behalf of Highland ever informed  
9 PricewaterhouseCoopers that HCMFA expects that  
10 it may be unable to repay amounts due and owing  
11 to Highland should they become due?

12 MS. DEITSCH-PEREZ: Object to the  
13 form. I think that is the third time.

14 A. I don't recall. Again, as I said,  
15 we -- all of this was given to the auditors.

16 Q. Do you know if Highland received  
17 anything of value in exchange for its agreement  
18 not to demand payment on amounts owed by HCMFA  
19 prior to May 31st, 2021?

20 MS. DEITSCH-PEREZ: Object to the  
21 form. That is the second time.

22 MS. DANDENEAU: Object to the form.

23 A. I have answered this question.

24 MR. RUKAVINA: Hold on. Object to  
25 legal conclusion. Go ahead.

1 WATERHOUSE - 10-19-21

2 A. I have answered this question  
3 before.

4 Q. And the answer was no?

5 A. I'm not aware.

6 Q. Now, this acknowledgment can't  
7 possibly apply to the two notes that you signed  
8 on behalf of HCMFA because those notes were  
9 signed on May 2nd and May 3rd, 2019; is that  
10 right?

11 MS. DANDENEAU: Objection to form.

12 A. Unless there is a drafting error.

13 Q. Okay. Are you aware of a drafting  
14 error?

15 A. I'm not aware. I didn't -- I wasn't  
16 part of -- I didn't sign this note or this  
17 acknowledgment. I didn't draft it.

18 Q. But you do see it is dated April 15,  
19 2019; right?

20 A. Yes.

21 Q. And this was a document that was  
22 actually included by the advisors in a pleading  
23 they filed with the Court; right?

24 MR. RUKAVINA: Well, I don't know  
25 that so I object to form.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Let's go to the first page of  
3 the document and just confirm that.

4 MR. AIGEN: Mr. Morris, I just note  
5 that you already said there was some error  
6 with the document that is listed as  
7 exhibit --

8 MR. MORRIS: No. No, no, no.

9 MS. DEITSCH-PEREZ: Oh, okay.

10 MR. MORRIS: What I said is that  
11 there is a few pages that were mistakenly  
12 stapled to the end of the document.

13 MS. DEITSCH-PEREZ: Okay.

14 MR. MORRIS: There is no problem  
15 with this document.

16 MS. DEITSCH-PEREZ: And just so  
17 we're clear that the document -- the pages  
18 that start with defendant's amended answer  
19 are not intended to be part of this  
20 document?

21 MR. MORRIS: That's correct.

22 MS. DEITSCH-PEREZ: And that the --  
23 but it is your representation that the rest  
24 of the document is -- is -- is correct  
25 because we don't -- we don't have any way



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1 WATERHOUSE - 10-19-21

3 Q. And NexPoint had its financial  
4 statements audited; isn't that correct?

6 Q. And was the process of NexPoint's  
7 audit similar to the process you described  
8 earlier for Highland and HCMFA?

10                    Q.        Okay.

15 MS. CANTY: It is going to be  
16 Exhibit 46.

18 Q. And do you see, sir, that we've put  
19 up NexPoint Advisors' consolidated financial  
20 statements and supplemental information for the  
21 period ending December 31st, 2019?

23 Q. Did you participate in the process  
24 whereby these audited financial statements were  
25 issued?

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A. I didn't participate directly, as

Q. Do you recall when the audit of

Q. And when do you recall it being

Completed?

Q. Do you know why the 2019 audit

It wasn't completed until January of 2021?

Q. Why was the NexPoint audit report

the period ending 12/31/19 not completed

A. Because we had to deal with working

MR. MORRIS: Can we go to the

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1 WATERHOUSE - 10-19-21

2 form.

3 A. Approximately.

4 Q. And does that refresh your  
5 recollection that between the time the note was  
6 executed and the end of 2019, that NexPoint had  
7 paid down approximately \$7 million?

8 A. Yes. If we are just doing the math,  
9 yes.

10 Q. Okay. Did NexPoint complete its  
11 audit from 2020?

12 A. Sorry, you kind of broke up. Do  
13 NexPoint complete?

14 Q. The audit of its financial  
15 statements for the period ending December 31st,  
16 2020?

17 A. No.

18 Q. No, it's not complete?

19 A. No, it is not complete.

20 Q. Did HCMFA complete its audit for the  
21 year ending December 31st, 2020?

22 A. No.

23 MR. MORRIS: Can we go to page 15,  
24 please, the paragraph at the bottom.

25 Q. Do you see that NexPoint has

1 WATERHOUSE - 10-19-21  
2 included under notes payable to Highland a  
3 reference to the amounts that were outstanding  
4 as of the year-end 2019 under the note that we  
5 looked at just a moment ago?

6 A. Yes. Are you talking about the  
7 second paragraph?

8 Q. I'm actually talking about first  
9 paragraph. Do you understand that the first  
10 paragraph is a reference to the 2017 note, and  
11 the amounts that were -- the principal amount  
12 that was outstanding as of the end of 2019?

13 MS. DANDENEAU: Objection to form.  
14 John, do you mean the first paragraph of  
15 that page?

16 MR. MORRIS: No, the first paragraph  
17 under notes payable to Highland.

18 A. Yeah, I see the paragraph, and  
19 again, this is what I answered earlier. I  
20 believe so, just because I don't -- again, this  
21 is a number in a balance sheet, and without  
22 matching it up and seeing the detail with the  
23 schedule like I kind of talked about for  
24 Highland's financial statements, it is a little  
25 bit more difficult to tie everything in

WATERHOUSE - 10-19-21

perfectly together.

Q. Okay. But you're not aware of any note that was outstanding at the end of 2019 from NexPoint to Highland other than whatever principal was still due and owing under the \$30 million note issued in 2017; correct?

A. Well, it -- I don't -- there is reference in the second paragraph. I don't -- I don't -- I don't recall what that is referring to, so I don't -- I don't know.

Q. Well, if you listen carefully to my question, right, I'm asking about notes that were outstanding at the end of 2019, and if we look at the paragraph you just referred to, it says that during the year there were new notes issued totaling \$1.5 million, but by the end of the year, no principal or interest was outstanding on the notes.

Do you see that?

A. Oh, I do, yes.

Q. So does that refresh your recollection that there were no notes outstanding from NexPoint to Highland other than the principal remaining under the original





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1 WATERHOUSE - 10-19-21

2 question. I left Highland as of -- I'm not  
3 aware of -- I left Highland in February --  
4 probably the last day of February of 2021.

5 Q. Okay.

6 A. I'm not -- I'm not aware of any --  
7 I'm not aware of anything past that date.

8 Q. Okay. While you were the CFO at  
9 Highland, did Highland prepare in the ordinary  
10 course of business a document that reported  
11 operating results on a monthly basis?

12 A. Yes.

13 Q. And are you generally familiar with  
14 the monthly operating reports?

15 A. Yeah. You are referring to the  
16 reports that we filed to the Court every month?

17 Q. I apologize, I'm not. I'm taking  
18 you back to the pre-petition period. There was  
19 a report that I have seen that I'm going to  
20 show you, but I'm just asking for your  
21 knowledge.

22 MR. MORRIS: Let's put it up on the  
23 screen, Exhibit 39.

24 (Exhibit 39 marked.)

25 Q. Do you see this is a document that

WATERHOUSE - 10-19-21

is called operating results?

A. Yeah, that's the title of it.

Q. Okay. And was a report of operating results prepared by Highland on a monthly basis during the time that you served as CFO?

A.      No.

Q. Are you familiar with a document of this type? And we can certainly look at the next page or two to refresh your recollection.

A. I'm just looking at the title. I don't really -- again, as I discussed before, I don't have any records or documents or emails or appointments or anything that I was able to use prior to -- prior to this deposition, so I'm doing the best I can.

Q. Okay. You don't need to apologize. I'm just asking you if you are familiar with the document called Operating Results that was prepared on a monthly basis at Highland?

MS. DEITSCH-PEREZ: Object to the form.

Q. If you're not, you're not.

A. I don't believe this was prepared on a monthly basis.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Do you see that this one  
3 is -- is dated February 2018?

4 A. Yes.

5 Q. Do you have -- do you believe --  
6 have you ever seen a document that was  
7 purporting to report operating results for  
8 Highland?

9 MS. DANDENEAU: Objection to form.

10 A. Yes.

11 Q. Okay. And when you say that you  
12 don't believe it was produced on a monthly  
13 basis, was it produced on any periodic bases to  
14 the best of your recollection?

15 A. I believe it was -- it was prepared  
16 on an annual basis.

17 Q. Okay.

18 MR. MORRIS: Can we look at the next  
19 page.

20 Q. Do you see that there is a statement  
21 here called: Significant items impacting  
22 HCMLP's balance sheet?

23 And it is dated February 2018.

24 A. Yes.

25 Q. Do you recall that there was a

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A. A report that was prepared.

A. Well, so Highland prepared a -- a monthly close package. And maybe I'm getting -- and -- and maybe change names at one time or maybe I'm just -- again, just misremembering -- but in that, yes, there is a page that would detail just changes in -- you know, just changes month over month on the balance sheet.

Did Highland prepare a monthly close package in the ordinary course of business during the time that you served as CFO?

Yes.

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A. Yes, it had a page like that is -- is on the screen that detailed items -- of that nature.

A. That would have been -- again, it  
es over time during my tenure as CFO.  
- it varied over -- over time, but -- but  
cally a -- a corporate accounting manager.

A. It would have been Dave Klos and  
Martin Hendrix.

A. Sometimes.

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1 WATERHOUSE - 10-19-21

2 were exceptions to the practice?

3 A. The practice meaning that they  
4 sometimes lured them to me?

5 Q. That that was the expectation even  
6 if circumstances prevented that from happening  
7 from time to time.

8 MS. DEITSCH-PEREZ: Object to the  
9 form.

10 A. I -- I would say it started out that  
11 way but over the years it -- it was not  
12 enforced.

13 Q. Okay. So you were -- you reviewed  
14 and approved monthly -- monthly reporting  
15 packages for a certain period of time and then  
16 over time you stopped doing that.

17 Do I have that right?

18 MS. DANDENEAU: Objection to form.

19 A. Yes, I mean, if you're talking about  
20 a formal meeting where we sit down and go  
21 through and approve it. I would say that was  
22 standard practice a decade -- you know, early  
23 on. And as time went on that -- that -- that  
24 practice wasn't followed.

25 Q. Okay.

WATERHOUSE - 10-19-21

A. And, quite frankly, I don't even if these were -- these were sent to me in any capacity.

Q. What was the purpose of preparing monthly reporting package -- withdrawn.

What was the purpose of preparing  
y close package?

MS. DEITSCH-PEREZ: Object to the

A. The -- the original purpose was so it would just -- it would be a report that reviewed monthly with senior management.

Q. Who was included in the idea of  
for management?

A. You know, I think originally when  
was conceived that would have been like  
Dondero and Mark Okada.

Q. Were monthly reporting -- withdrawn.

Were monthly close packages prepared  
 to of your knowledge until the time  
 Highland?

A. To my knowledge -- I don't know, really. I mean, to my knowledge, I believe as being -- that was still being done. I